United States Court of Appeals
for the Second Circuit

JOINT APPENDIX

77-7069

ORIGINAL
WITH PROOF
OF SERVICE

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

BALLON, STOLL & ITZLER,

Plaintiff-Appellant,

-against-

THOMAS J. DUFFEY, HERMAN A. LUEKING, JR., ALBERT D. MATHESON, WILLIAM J. KENNEDY, JOHN A. MURPHY, JACK A. SHEETZ, JOHN SPICKERMAN, FRANK E. FITZSIMMONS, ROBERT HOLMES, DONALD PETERS, WILLIAM PRESSLER, ODELL SMITH, ROY L. WILLIAMS, FRANK H. RANNEY, and JOSEPH MORGAN, Not Individually But as Trustees Under a Common Law Trust of the Central States Southeast and Southwest Areas Pension Fund,

Defendants-Appellees.

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX
Volume I of II pages A-1 to A-405

FILED
MAR 25 1977

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RONALD S. ITZLER
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DOCKET ENTRIES

CIVIL DOCKET
UNITED STATES DISTRICT COURT

JUDGE [redacted]

JUDGE [illegible]

JUDGE HAIGHT

Jury demand date:

72 CIV. 2916

C. Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
BALLON, STOLL & ITZLER vs. THOMAS J. DUFFEY HERMAN A. LUEKING JR. ALBERT D. MATHESON WILLIAM J. KENNEDY JOHN A. MURPHY JACK A. SHEETZ JOHN SPICKERMAN FRANK E. FITZSIMMONS ROBERT HOLMES DONAL PETERS WILLIAM PRESSER ODELL SMITH ROY L. WILLDAMS FRANK H. RANNEY JSSEPH MORGAN, not individyally but as Trustees under a Common Law Trast.of the Central States South east and South west Areas Pension Fund.	For plaintiff: ~~SCHAEFFER DALE VOGEL & TAVROW~~ ~~1501 Broadway~~ ~~New York N.Y. 10036~~ Ballon,Stoll & Itzler 1450 Broadway New York, N.Y. 10018 354-9000 BEST COPY AVAILABLE For defendant: ~~SCHAEFFER DALE-VOGEL-&-TAVROW~~ ~~1501 Broadway~~ 410 ~~PARK AVE-NYC 10022~~ ~~New York N.Y. 10036~~ (PL 8-8000) Subst. 7 26 76 Greenbaum Wolff & Ernst 437 Madison Ave. NYC 10022 PL 8 4010

STATISTICAL RECORD	COSTS			DATE	NAME OR RECEIPT NO.	REC.		DISB.	
S. 5 mailed x	Clerk			7/10/72	Schaeffer D	15	—		
				7/11/72	US Treas	—		15	—
S. 6 mailed 1-12-77	Marshal								
Basis of Action: Breach of Agreement	Docket fee								
	Witness fees								
Action arose at:	Depositions								

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[illegible]

Ballon, Stoll & Itzler vs. Thomas J. Duffey, et al

(PG. #2) JUDGE DUFFY 72 CIV. 291

DATE	PROCEEDINGS	Date Order Judgment N
Jul 10-72	Filed petition for removal.	
Jul 10-72	Filed Undertaking for removal ($500.00) Fireman's Fund American	
JUL 19 72	**Filed Defts ANSWER to pltff's complaint.**	SDNT
Feb.16-73	Filed Objections to Request for Production of Documents.	
Apr.3-73	Filed pltff's Pro-Se affidavit & notice of motion ret. before Duffy, J. on 4-13-73 Re: inspection of documents.	
Apr30-73	Filed MEMO-END. on motion dtd 4-3-73. The matter having been settled betwe the parties, the within motion for production of documents is denied witthout prejudice. DUFFY, J. (mn)	
Dec 18-73	Filed stip. & order extending time to answer interrogs to Jan. 15-74- Duffy, J.	
Jan. 16-74	Filed stip & order that the amended complaint in the form annexed hereto, shall be deemed served and accepted by the defts and that the defts. shall have 20 days from the date this Court approves this stip within which to answer the amended complaint and as indicated. So ordered- DUFFY, J.	
Jan. 18-74	Filed stip & order extending defts.' time to answer pltff's interrogs. to 1-31-74. So ordered- DUFFY, J.	
Jan. 18-74	Filed defts' interrogs.	
Jan. 18-74	Filed defts' notice of taking deposition of pltff. by Frederick E. M. Ballon on 2-6-74.	
eb.1- 74	Filed ANSWER to amended complaint.	SSDV&T
April 1-74	Filed amended complaint.	
Apr. 4-74	Filed pltffs' affdvt. of Daniel Cohen and notice of motion for an order for production of documents. Ret. 4-16-74	
Apr. 16-74	Filed defts' affdvt. of Sydney J. Schwartz in opposition to motion for production of documents.	
Apr 16-74	Filed pltff's reply affdvt. of Daniel Cohen	
Apr. 16-74	Filed pltff's memorandum of law in support of motion for an order compelling production of documents for discovery and inspection.	
Apr. 23-74	Filed memo endorsed on motion filed 4-4-74. The motion is granted with respect to all minutes not legally privileged, condition that the pltff. submits a protective order requring all disclosures to be kept strictly confidential. So ordered- DUFFY, J. (m/n)	
May 3-74	Filed Order directing discovery as indicated. DUFFY, J. (m/n)	
May 7-74	Filed defts' notion of motion for an order granting re-argument of the pltffs' motion for discovery.	
ay 7-74	Filed memorandum on behalf of the defts. in support of re-argument.	
May 9-74	Filed pltff memorandum in opposition to def s motion for reargument.	
une 4-74	Filed memo endorsed on motion filed 5-7-74. Motion for reargument is denied and the application of the order is likewise denied. So ordered- DUFFY, J. (m/n)	
June 24-74	Filed pltff's answers to interrogs.	
June 24-74	Filed pltff's interrogs. to defts.	
Nov. 13-74	Filed defts' affdvt. of Sydney J. Schwartz and notice of motion for an order to compel production of documents on oral deposition. Ret. 11-19-74	
ov. 21-74	Filed stip & order adjourning defts' motion for an order directing pltff. to produce, etc. retnble on 11-19-74 to 12-10-74. So ordered- DUFFY, J.	
ec. 11-74	Filed stip & order that defts' motion to compel the production of documents on oral deposition, orginally retnble on 11-19-74 and adjourned to 12-10-74 is further adjourned to 1-7-75. So ordered- DUFFY, J.	
Jan. 7-75	Filed memo endorsed on motion filed 11-13-74. The motion is withdrawn upon the consent of the parties. So ordered- DUFFY, J.	
ov.12-75	Filed Defts' Affidavit and Notice of Motion for an order to compel discovery . Ret: 11-25-75.	
Nov. 19-75	Filed defts' affdvt. of Sydney J. Schwartz re: Statement under Rule 9 (f)	
Nov. 19-75	Filed defts' memorandum in support of motion pursuant to Rule 37 FRCP	

(CONT'D— PG. #3)

(PAGE # 3) JUDGE (DUFFY)

il Docket Continuation

	PROCEEDINGS	Date Or Judgment
2-18-76	Filed memo endorsed on motion filed 11-12-75. Motion denied. So ordered- DUFFY, J. (m/n)	
4-28-76	ailed notice of reassignment of this action to Haight, J.	
5-27-76	RE-TRIAL CONFERENCE HELD BY Haight, J. - Trial set for 7-21-76 at 10:00 A.M.	
6-30-76	Filed Defts'. supplemental interrogs.	
7-26-76	Filed Stip & Order that Greenbaum Wolff & Ernst are substituted as attys for dfts. in place & stead of Schaeffer Dale & Vogel. ..Haight J	
09-22-76	Trial begunand continued	
09-23-76	Trial continues	
09-27-76	Trial continues	
09-27-76	Trial continues	
09-27-76	Trial concluded	
10-20-76	Filed pltffs's post trial reply.	
10-20-76	Filed pltff's memorandum.	
11-17-76	Filed Transcript of Record of Proceedings dtd 9/27/76	
1-12-77	Filed memo and order .... i conclude that BSI ahs not sustained tis burden of proff in respect to the first allegation.... the case is entirely lacking in elements of falsity scienter and intent which are essential to second cause of action.... I further conclude that BSI has failed to prove a binding and irrevocable contractual obligation on the part of the Trustee or the fund etc ... That conclusion is fatal to third cause of action..... Clerk of the Court is directed to enter a judgment in favor of defts with costs in their favor to be subsequently taxed. So ordered Haight J. m/n	
1-13-77	Filed judgment that defts Trustees have judgment against pltff dismissing the complaint with costs to be taxed in favor of the defts. Judgment ent. Clerk.	
2-7-77	Filed notice of appeal to the USCA form the final order of J. Haight of 1-12-77 m/n	
2-7-77	Filed transcript dated 9-22,23,27, 28 1976.	
*2-18-76	Filed Affidavit in Opposition, by plaintiffs, in opposition to a certain motion made by defendants for an order compelling the defendants to further respond to certain supplemental Interrogatories as propounded by defendants to plaintiff.	
2-23-77	Filed defendants' reply to plaintiffs memorandum.	
2-23-77	Filed Post-Trial Memorandum of behalf of defendants.	
2-23-77	Filed plaintiff's responses to questions pursuant to order for initial pre-trial confe	
2-23-77	Filed defendants' statement as to material facts and case law.	

DEFENDANTS' INTERROGATORIES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

BALLON, STOLL & ITZLER, :

Plaintiff, :

-against- :

THOMAS J. DUFFEY, HERMAN A. LUEKING, JR., ALBERT D. MATHESON, WILLIAM J. KENNEDY, JOHN A. MURPHY, JACK A. SHEETZ, JOHN SPICKERMAN, FRANK E. FITZSIMMONS, ROBERT HOLMES, DONALD PETERS, WILLIAM PRESSLER, ODELL SMITH, ROY L. WILLIAMS, FRANK H. RANNEY, and JOSEPH MORGAN, Not Individually But as Trustees Under a Common Law Trust of the Central States Southeast and Southwest Areas Pension Fund, :

Defendants. :

- x

72 Civ. 2916

Judge Kevin T. Duffy

INTERROGATORIES

TO: BALLON, STOLL & ITZLER, a Partnership

PLEASE TAKE NOTICE that, pursuant to Rule 33 of the Federal Rules of Civil Procedure, you, or an officer or agent of you, are required to answer in writing and under oath each of the following interrogatories, and to serve a copy of each answer upon the undersigned attorneys for defendants within thirty days after service hereof:

DEFINITIONS

A. As used herein, the term "document" means the original and any copy, regardless of origin or location, of any book, pamphlet, periodical, letter, memorandum, telegram, report, record, study, handwritten note, working paper, chart, paper, graph, index, tape, data sheet or data processing card, or any other written, recorded, transcribed, punched, taped, filmed, or graphic matter, however produced or reproduced, to which you have or have had access.

B. The term "communication" means discussions, conversations, correspondence, telephone calls, any oral utterance or written message in any form whatever.

C. The term "identity", "identify" or "identification" when used with reference to an individual person, means to state his full name and present position and business affiliation, and business and home address, if known, and each prior position and business affiliation.

The term "identity", "identify" or "identification" when used with reference to a document, means to state the date and author (and, if different, the signer or signers), the addressee, type of document (e.g., letter, memorandum, chart) and its present or last known location or custodian. If any such document was, but is no longer, in your possession or subject to your control, state the disposition which was made of it, the reason for such disposition and the date thereof.

The term "identity", "identify" or "identification" when used with reference to a communication, means to identify the persons present or involved in each such oral communication and the date such occurred, the subject matter and substance and nature of each such communication, the identity of your source of information and the date you received such for any such communication you were not a party to or present at, and the identity and description of all documents relating to or concerning, in whole or in part, all such communications.

1. State the basis for your allegation that the Court has jurisdiction of this action, including in your response:

(a) Identify and describe the business transactions of the defendants within the State of New York.

(b) Identify and describe the alleged tortious acts committed by the defendant in the State of New York.

(c) Identify and describe any and all documents relating to or concerning, in whole or in part, the allegations contained in paragraph THIRD of your Complaint.

2. Identify and describe all the facts upon which you relied for your belief that prior to October 31, 1969, Neisco, Inc. ("Neisco"), had suffered financial setbacks and losses resulting in an inability to pay its debts, as alleged in paragraph FIFTH of your Complaint, and identify and describe all documents and communications relating to or concerning such allegation.

3. Identify and describe the facts upon which you base your belief that the defendant was the single largest creditor of Neisco and held equitable liens on all of the assets of Neisco, as alleged in paragraph SIXTH of your Complaint, and identify and describe all documents and communications relating to or concerning such allegation.

4. Identify and describe the facts upon which you relied, the identity of your source of information, how you received such information, and the dates you received such information relating to or concerning your allegation in paragraph SEVENTH of your Complaint that defendant promised and agreed, through its representatives and Trustees to pay the reasonable value of the legal services as alleged in paragraph SEVENTH of your Complaint.

(a) State whether such promise was oral or in writing, or partly oral and partly in writing.

(b) If in writing, in whole or in part, furnish copies of all writings or documents constituting such written portion, and a statement of the date and source or authorship of each writing or document.

(c) If oral, in whole or in part, state the substance thereof, the date thereof, the person or persons who on behalf of defendants made such offer and the place where each offer or element thereof was made and in each case whether made in person, by telephone, or by some other means of communication.

5. Identify and describe the facts upon which you base your allegation in paragraphs EIGHTH and NINTH of your Complaint, that you performed all of the services to be performed by you except as prevented or excused by the defendant, including a description of the services rendered, the date upon which such services were rendered, which services and in what manner defendant prevented you from performing, and any compensation received by you for so serving.

6. Identify and describe upon whom demand for payment was made, by whom such demand was made, and describe the response thereto, including the description and identification of any documents or communications relating to such demand and alleged refusal by defendant to pay such demand, as alleged in paragraphs TENTH, ELEVENTH, and TWELFTH of your Complaint.

In respect of each demand and refusal, include in your response:

(a) A statement whether such demand or refusal was oral or in writing, or partly oral and partly in writing.

(b) If in writing, in whole or in part, copies of all writings or documents constituting such written portion, and a statement of the date and source or authorship of each writing or document.

(c) If oral, in whole or in part, a statement of the substance thereof, the date thereof, the person or persons who on behalf of plaintiff or defendants made such demand or refusal and the place where each demand or refusal or element thereof was made and in each case whether made in person, by telephone, or by some other means of communication.

7. State in detail how the amount of $75,731.06, the damages alleged in paragraphs THIRTEENTH, TWENTY-FIFTH, and THIRTY-FIRST of your Complaint, is computed and the source of each element used to compute the alleged damages, including identification and description of each and every document relating thereto.

8. Identify and describe the facts upon which you base your belief, as alleged in paragraphs FIFTEENTH and SIXTEENTH of your Complaint, that defendant, through its representatives and Trustees, warranted and represented to you that defendant would take all necessary steps and furnish all the funds required to confirm a certain arrangement proceeding, including the payment of legal fees and administration expenses, both prior to and after filing of a Chapter XI petition, including in your response:

(a) A statement whether such warranties and representations were oral or in writing, or partly oral and partly in writing.

(b) If in writing, in whole or in part, furnish copies of all writings or documents constituting such written portions, and a statement of the date and source or authorship of each writing or document.

(c) If oral, in whole or in part, a statement of the substance thereof, the date thereof, the person or persons who on behalf of defendant made such warranties and representations, and the place where each warranty and representation or element thereof was made and in each case whether made in person, by telephone, or by some other means of communication.

9. Identify and describe the facts upon which you base your allegation in paragraphs SEVENTEENTH and EIGHTEENTH of your Complaint that you performed all of the legal services required to be performed during the alleged Chapter XI proceeding, including the preparation and filing of a petition therein, in reliance upon the alleged representations and warranties made by the defendant, including in your response:

(a) A description of the services rendered, the dates upon which the services were rendered, and any compensation received therefor.

(b) Set forth the facts that served as a basis for your reliance on the alleged representations and warranties of the defendant.

(c) Identify and describe all documents or communications relating to or concerning the allegations in paragraphs SEVENTEENTH and EIGHTEENTH of your Complaint.

10. Identify and describe the facts upon which you base your allegation that the representations made by defendant were false, deceptive, fraudulent, deceitful, and misleading and were so known by defendat to be so and were made with intent to deceive and defraud you and to induce you to act in accordance with the alleged warranties and representations, as alleged in paragraphs

NINETEENTH, TWENTY-SECOND, and TWENTY-THIRD of your Complaint, including the identification and description of all documents concerning or relating thereto, and a statement setting forth in each respect it is claimed such warranties and representations were false.

11. Identify and describe the basis for your allegation in paragraphs TWENTIETY and THIRTIETH of your Complaint that no order of confirmation was entered in the Chapter XI proceeding, and Neisco was adjudicated a bankrupt solely because defendant failed and refused to furnish the necessary funds required therefor, including all the facts upon which you rely for your belief, the identity of your sources of information, how you received such information, and the date you received each item and identify and describe all documents and communications relating to or concerning such allegations.

12. Identify and describe the facts upon which you rely, the identity of your source of information, how you received such information, and the dates you received such information relating to or concerning your allegation in paragraph TWENTY-SEVENTH that defendant, through its representative and Trustees, promised and agreed that it would take all necessary steps and furnish all of the funds required to confirm any arrangement or plan acceptable to Neisco's general unsecured creditors, including payment for the legal services to be rendered by you and all other administrative expenses, in consideration for you agreeing to render all the legal services required to file a Chapter XI petition, to represent Neisco as debtor-in-possession, to propose an arrangement with Neisco's general unsecured creditors and to provide other legal services in conneciton therewith, including in your response:

(a) A statement whether defendant's promise was oral or in writing, or partly oral and partly in writing.

(b) If in writing, in whole or in part, copies of all writings or documents constituting such written portion, and a statement of the date and source or authorship of each writing or document.

(c) If oral, in whole or in part, a statement of the substance thereof, the date thereof, the person or persons who on behalf of defendant made such offer, and the place where each offer or element thereof was made and in each case, whether made in person, by telephone, or by some other means of communication.

13. Identify and describe the facts upon which you base your allegation in paragraph TWENTY-EIGHTH of your Complaint that defendant knew that Neisco prior to October 31, 1969 and thereafter, suffered financial setbacks and losses resulting in the inability of Neisco to pay its debts as they became due, and that any plan or arrangement between Neisco and its general unsecured creditors and the payment of any administrative expenses including payment for legal services would be wholly and completely dependent upon the defendant furnishing all of the funds required to confirm such arrangement or plan acceptable to Neisco's general unsecured creditors, and that defendant entered into the alleged agreement in paragraph TWENTY-SEVENTH of your Complaint with full knowledge of said facts and in reliance thereon, including a description and identification of all communications and documents relating to or concerning such belief as alleged.

14. Identify and describe the facts upon which you rely for your allegation in paragraph TWENTY-NINTH of your Complaint

that defendant failed and neglected to perform the conditions of the alleged agreement in that the defendant has refused to furnish the funds required to confirm the arrangement and to proceed with the confirmation or furnish any of the other funds required, although payment of said funds was allegedly demanded, including in your response:

(a) Identity and description of your source of information, how you received such information, and the dates you received such information.

(b) Identity and description of persons upon whom demand for payment was made, by whom such demand was made, and description of the responses thereto.

(c) Description and identity of all documents and communications relating to or concerning the allegations in paragraph TWENTY-NINTH of your Complaint.

Dated: New York, New York
January 15, 1974

SCHAEFFER, DALE, VOGEL & TAVROW

By:
A Member of the Firm
Attorneys for Defendants
410 Park Avenue
New York, New York 10022
(212) 758-8000

ANSWER TO AMENDED COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- -x

BALLON, STOLL & ITZLER,

Plaintiff,

-against-

THOMAS J. DUFFEY, HERMAN L. LUEKING, JR., ALBERT D. MATHESON, WILLIAM J. KENNEDY, JOHN A. MURPHY, JACK A. SHEETZ, JOHN SPICKERMAN, FRANK E. FITZSIMMONS, ROBERT HOLMES, DONALD PETERS, WILLIAM PRESSER, ODELL SMITH, ROY L. WILLIAMS, FRANK H. RANNEY, and JOSEPH MORGAN, not individually but as Trustees under a Common Law Trust of the Central States Southeast and Southwest Areas Pension Fund,

Defendants.

- -x

72 Civ. 2916

Judge Kevin T. Duffy

ANSWER TO AMENDED COMPLAINT

Defendants, by Schaeffer, Dale, Vogel & Tavrow, special counsel to Joseph S. Radom, their attorney, for their answer to the plaintiff's amended complaint do hereby allege:

1. Deny each and every allegation contained in the paragraphs of plaintiff's amended complaint numbered THIRD, FOURTH, SEVENTH, EIGHTH, NINTH, TENTH, ELEVENTH, THIRTEENTH, FOURTEENTH, FIFTEENTH, SIXTEENTH, SEVENTEENTH, EIGHTEENTH, NINETEENTH, TWENTY-FIRST, TWENTY-SECOND, TWENTY-THIRD, TWENTY-FOURTH, TWENTY-FIFTH, TWENTY-SIXTH, TWENTY-SEVENTH, TWENTY-EIGHTH, TWENTY-NINTH, and THIRTY-FIRST.

2. Defendants deny having knowledge or information sufficient to form a belief as to the allegations contained in paragraphs of plaintiff's amended complaint numbered FIRST, TWENTIETH, and THIRTIETH.

AS AND FOR A FIRST AND SEPARATE AFFIRMATIVE DEFENSE

3. This Court, and any court located in the State of New York, lacks jurisdiction of the person of the defendants and of the subject matter of this action because defendants do not reside within the State of New York, have transacted no business whatsoever within the State of New York and have committed no tortious acts whatsoever within the State of New York.

AS AND FOR A SECOND AND SEPARATE AFFIRMATIVE DEFENSE

4. The claim of the plaintiff is founded upon the existence of an alleged agreement between the plaintiff and the defendants, to retain the services of the plaintiff. The plaintiff has specifically stated under oath by affidavit of Ronald Itzler, a member of the plaintiff firm, dated November 6, 1969 (copy of which is attached herein as Exhibit "A"), that it did not represent any of the Creditors of Neisco, Inc. The defendants are, in the language of the plaintiff's complaint "the largest single creditor of Neisco." See complaint paragraph 6 attached hereto as Exhibit "B".

WHEREFORE, defendants demand judgment dismissing plaintiff's complaint, together with the costs and disbursements of this action.

Dated: New York, New York
January 29, 1974

SCHAEFFER, DALE, VOGEL & TAVROW

By: Lawrence Vogel
A Member of the Firm
Attorneys for Defendants
410 Park Avenue
New York, New York 10022
758-8000

EXHIBIT "A" TO ANSWER TO AMENDED COMPLAINT --

ORDER OF NOVEMBER 24, 1969 AUTHORIZING RETENTION OF ATTORNEYS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-------------------------------X

In the Matter

-of-

NEISCO, INC.,

Debtor.

-------------------------------X

In Proceedings For
An Arrangement
No. 69-B-715

ORDER AUTHORIZING RETENTION OF ATTORNEYS

FILED
NOV 24 1969
ROY BABITT
REFEREE IN BANKRUPTCY

At New York, in said District, on the 24 day of November, 1969.

Upon the annexed petition of NEISCO, INC., debtor-in-possession, duly verified the 6th day of November, 1969, praying for authority to retain the law firm of BALLON, STOLL & SHYMAN, Esqs., as counsel, under a general retainer, to represent it herein, and upon the annexed affidavit of RONALD S. ITZLER, duly sworn to the 6th day of November, 1969, and the Court being satisfied that said law firm and the members thereof represent no interest adverse to said NEISCO, INC., as debtor-in-possession, or to its estate, in the matters upon which they are to be engaged, and that their employment is necessary and would be to the best interests of the estate, it is

ORDERED, that NEISCO, INC., debtor-in-possession, be and it hereby is authorized to employ and retain the law firm of BALLON, STOLL & SHYMAN, as counsel to represent it in these proceedings, under a general retainer.

Roy Babitt

Referee in Bankruptcy

EXHIBIT "A" TO ANSWER TO AMENDED COMPLAINT -- PETITION OF NEISCO, INC. FOR ORDER AUTHORIZING RETENTION OF ATTORNEYS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-------------------------------X

In the Matter

-of-

NEISCO, INC.,

Debtor.

-------------------------------X

In Proceedings For
An Arrangement
No. 69 -B-

PETITION

BEST COPY AVAILABLE

TO THE HONORABLE REFEREE IN BANKRUPTCY:

The petition of NEISCO, INC., debtor-in-possession, respectfully shows and represents:

1. Simultaneously herewith, the above named debtor filed a petition in this Court proposing an arrangement under Chapter XI, Section 322 of the Bankruptcy Act.

2. That your petitioner has continued the operation of the debtor's business as debtor-in-possession and is operating the business and managing its property pursuant to the order of this Court.

3. Your petitioner desires to employ and retain the firm of BALLON, STOLL & SHYMAN, Esqs., attorneys duly admitted to practice in this Court, to represent it as debtor-in-possession.

4. Your petitioner has selected the law firm of BALLON, STOLL & SHYMAN, Esqs., for the reason that it has had considerable experience in matters of this nature and your petitioner

verily believes that said law firm is well qualified to represent it in this proceeding.

5. The professional services that said attorneys are to render are as follows:

(a) To give petitioner legal advice with respect to its powers and duties as a debtor-in-possession under the provisions of Chapter XI of the Bankruptcy Act in the continued operation of the debtor's business and the management of its property.

(b) To prepare, on behalf of petitioner, as debtor-in-possession, all necessary petitions, answers, orders, reports and other legal papers.

(c) To perform all other legal services for petitioner, as debtor-in-possession, which may be necessary herein, including, but not limited to, negotiations with respect to executory contracts.

6. It is necessary and imperative for petitioner, as debtor-in-possession, to employ attorneys for such professional services.

7. To the best of your petitioner's knowledge, said attorneys have no connection with the creditors or any other party in interest or their respective attorneys, except as stated in the affidavit of RONALD S. ITZLER, a member of said law firm, annexed hereto and made a part hereof.

8. Petitioner desires to employ BALLON, STOLL & SHYMAN, as counsel under a general retainer because of the extensive legal services required.

9. BALLON, STOLL & SHYMAN represent no interest adverse to petitioner or the estate in the matters upon which it is to be engaged, and its employment will be in the best interest of the estate.

10. No committee of creditors has been appointed herein and the initial meeting of creditors has not yet been held.

WHEREFORE, petitioner prays that it be authorized to employ the said law firm of BALLON, STOLL & SHYMAN, as counsel to represent it in this proceeding under Chapter XI of the Bankruptcy Act and that it have such other and further relief as to this Court may seem just and proper in the premises, for all of which no previous application has been made to this or any other Court.

Dated: New York, New York

By: ______________________
Treasurer

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

GEORGE HORVATH , being duly sworn, deposes and says:

That he is the Treasurer of NEISCO, INC., the debtor herein; that he has read the foregoing petition and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, he believes it to be true.

Deponent further says that the reason this verification is made by deponent and not by NEISCO, INC., is because the said NEISCO, INC., is a corporation and deponent an officer thereof, to wit, its Treasurer.

George Horvath

Sworn to before me this
6th day of November,
1969.
Sheila Goodman

SHEILA GOODMAN
Notary Public, State of New York
No. 31 [illegible]
Qualified in New York County
Commission Expires March 30, 1971

EXHIBIT "A" TO ANSWER TO AMENDED COMPLAINT -- AFFIDAVIT OF RONALD S. ITZLER IN SUPPORT OF PETITION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

--------------------------------X

In the Matter

-of-

NEISCO, INC.,

Debtor.

--------------------------------X

In Proceedings For
An Arrangement
No. 69 -B-

AFFIDAVIT

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

RONALD S. ITZLER, being duly sworn, deposes and says:

I am an attorney-at-law duly licensed to practice before the Courts of the State of New York and this Court. I am a member of the firm of BALLON, STOLL & SHYMAN, with offices for the practice of law at 1450 Broadway, in the Borough of Manhattan, City, County and State of New York.

Neither your deponent nor any member of the firm has any connection with the above named debtor, its creditors, or any other party in interest, or their respective attorneys, except as follows:

(a) Your deponent has prepared and filed the debtor's petition for an arrangement herein.

(b) Your deponent and the law firm, of which he is a member, has had considerable experience in similar proceedings, and has on various occasions, in these matters, represented both creditors and debtors, but does not represent any of them in this proceeding or in any matter relating to the indebtedness owing to them from the above named debtor.

Neither I nor any member of the law firm of which I am a member represents any interest adverse to the debtor-in-possession herein, or the estate of NEISCO, INC., debtor, in the matters in which we are to be engaged.

Your deponent's firm has represented the debtor since its inception. The principals of the firm have chosen to retain our firm in connection with their financial difficulties because of our representation of the debtor prior hereto and because of our reputation in the field of debtor rehabilitation.

Ronald S. Itzler

Sworn to before me this

6th day of November, 1969.

[illegible] New York
Sheila Goodman
Notary Public, [illegible]
[illegible] New York County
Commission [illegible] '71

EXHIBIT "B" TO ANSWER TO AMENDED COMPLAINT -- AMENDED COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---x

BALLON, STOLL & ITZLER, 72 Civ. 2916

Plaintiff,

-against-

THOMAS J. DUFFEY, HERMAN A. LUEKING, JR., ALBERT D. MATHESON, WILLIAM J. KENNEDY, JOHN A. MURPHY, JACK A. SHEETZ, JOHN SPICKERMAN, FRANK E. FITZSIMMONS, ROBERT HOLMES, DONALD PETERS, WILLIAM PRESSER, ODELL SMITH, ROY L. WILLIAMS, FRANK H. RANNEY, and JOSEPH MORGAN, not individually but as Trustees under a Common Law Trust of the Central States Southeast and Southwest Areas Pension Fund,

Defendants.

AMENDED COMPLAINT

---x

Plaintiff BALLON, STOLL & ITZLER, complaining of the defendant, alleges:

FIRST: Plaintiff is a partnership consisting of FREDERICK E.M. BALLON, ARTHUR L. STOLL, RONALD S. ITZLER and ALBERT M. KAUFMAN, said partnership having been formed under the laws of the State of New York and engaged in the practice of law in the City and State of New York.

SECOND: Upon information and belief, the defendant is a Trust organized under the laws of the State of Illinois and has its principal place of business in the City of Chicago, State of Illinois.

THIRD: This Court has jurisdiction of this action and the defendant because the causes of action set forth in this complaint arise out of the transacting of business by the defendant within the State of New York and the commission of tortious acts by the defendant therein, all of which subjects the defendant to personal jurisdiction of this Court under and pursuant to New York CPLR 302.

AS AND FOR A FIRST CAUSE OF ACTION

FOURTH: Plaintiff repeats, reiterates and realleges each and every allegation of the complaint contained in paragraphs "FIRST" through "THIRD" inclusive, as if more fully set forth at length herein.

FIFTH: Upon information and belief, prior to October 31, 1969, Neisco, Inc. (hereinafter referred to as "Neisco") had suffered financial setbacks and losses resulting in the inability of Neisco to pay its debts as they became due.

SIXTH: Upon information and belief, at all times hereinafter mentioned, the defendant was the single largest creditor of Neisco for a sum in excess of $1,600,000 and the defendant held equitable liens in all of the assets of Neisco pursuant to security agreements and applicable filings under the laws of the State of New York.

SEVENTH: Between on or about October 31, 1969 and on or about November 24, 1969, in consideration of the plaintiff agreeing to render all of the legal services required to file Neisco's petition under Chapter XI of the Bankruptcy Act in the United States District Court for the Southern District of New York, to represent Neisco as debtor-in-possession during the Chaper XI proceeding, to propose an arrangement with Neisco's general unsecured creditors and to provide other legal services in connection with the Chapter XI proceeding, defendant, through its Trustees and representatives, acting within the State of New York, unconditionally promised and agreed to pay to plaintiff the reasonable value of the said legal services.

EIGHTH: Between October 31, 1969 and March 22, 1972, the date upon which Neisco was adjudicated a bankrupt, plaintiff performed its part of the agreement with the defendant by providing substantial legal services to Neisco including, without limitation, the preparation and filing of the petition under Chapter XI of the Bankruptcy Act and related documents, the representation of Neisco in its negotiations with general unsecured creditors resulting in an agreed arrangement, and all other legal services required in the Chapter XI proceeding.

NINTH: Plaintiff has duly performed its part of the agreement except as prevented or excused therefrom by the acts of the defendant.

TENTH: The reasonable value of the legal services rendered by plaintiff is the sum of $100,000.00, no part of which has been paid except the sum of $25,000.00.

ELEVENTH: Subsequent to the adjudication in bankruptcy of Neisco, applicant made due and proper demand upon defendant for payment of its bill for the balance of legal services rendered, together with disbursements in the sum of $731.06, all as agreed with the defendant.

TWELFTH: The defendant has failed and refused to pay said bill.

THIRTEENTH: By reason of the foregoing, plaintiff has sustained damage in the sum of $75,731.06.

AS AND FOR A SECOND CAUSE OF ACTION

FOURTEENTH: Plaintiff repeats, reiterates and realleges each and every allegation of the complaint contained in paragraphs "FIRST" through "THIRD", "FIFTH" through "TENTH" inclusive, as if more fully set forth at length herein.

FIFTEENTH: Between on or about October 31, 1969 and on or about November 24, 1969, the date upon which the Chapter XI petition was filed, in order to induce plaintiff to prepare and file the Chapter XI petition on behalf of Neisco and to render the required legal services before and during the Chapter XI proceeding, defendant, through its Trustees and representatives, acting within the State of New York, unconditionally warranted and represented to plaintiff that defendant would take all necessary steps and furnish all of the funds required to confirm said arrangement proceeding, including payment for the legal services to be rendered by plaintiff in the Chapter XI proceeding and all other administration expenses of said proceeding.

SIXTEENTH: Between November 24, 1969 and March 22, 1972, in order to induce plaintiff to continue to represent Neisco in its Chapter XI proceeding and to perform all the legal services necessary to confirm Neisco's arrangement with its creditors, defendant, through its Trustees and representatives, acting within the State of New York, continually and continuously warranted and represented to plaintiff that defendant would take all necessary steps and furnish all of the funds required to confirm said arrangement proceeding including payment for the legal services rendered by plaintiff in the Chapter XI proceeding and all other administration expenses of said proceeding.

SEVENTEENTH: In reliance upon the representations and warranties made by the defendant and as a result thereof, plaintiff prepared and filed, on November 24, 1969, Neisco's petition under Chapter XI of the Bankruptcy Act and all other required related documents.

EIGHTEENTH: In reliance upon the representations and warranties made by the defendant, and as a result thereof, plaintiff rendered all of the legal services required to be performed during the Chapter XI proceeding.

NINETEENTH: The representations and warranties made by the defendant that it would take all necessary steps and furnish all other required funds required to confirm said arrangement were wholly false, deceptive, fraudulent, deceitful and misleading since, in truth and in fact, defendant, for reasons unknown to plaintiff, did not intend to provide the funds required for said confirmation.

TWENTIETH: No order of confirmation was entered in the Chapter XI proceeding and, on March 22, 1972, Neisco was adjudicated a bankrupt solely for the reason that defendant failed and refused to furnish the funds required to confirm the arrangement and to proceed with confirmation.

TWENTY-FIRST: Plaintiff would not have rendered the aforesaid legal services in connection with Neisco's Chapter XI proceeding except for its reliance upon the representations and warranties made by the defendant nor if it had known that the defendant did not intend to take the necessary steps and furnish the funds required to confirm said arrangement proceeding.

TWENTY-SECOND: At the time that the representations and warranties were so made, they were known by the defendant to be false, deceptive, fraudulent, deceitful and misleading.

TWENTY-THIRD: Defendant made the representations to plaintiff wilfully and with intent to deceive and defraud the plaintiff and to induce it to act in accordance with said representations and warranties.

TWENTY-FOURTH: At the time that the representations and warranties were made by the defendant, plaintiff was ignorant of the falsity thereof and believed them to be true.

TWENTY-FIFTH: By reason of the foregoing, plaintiff has sustained damages in the sum of $75,731.05.

AS AND FOR A THIRD CAUSE OF ACTION

TWENTY-SIXTH: Plaintiff repeats, reiterates and realleges each and every allegation of the complaint contained in paragraphs "FIRST" through "THIRD", "FIFTH", "SIXTH", "EIGHTH" through "TENTH" inclusive, as if more fully set forth at length herein.

TWENTY-SEVENTH: That between and on or about October 31, 1969 and March 22, 1972, in consideration of plaintiff agreeing to render all of the legal services required to file Neisco's petition under Chapter XI of the Bankruptcy Act in the United States District Court for the Southern District of New York, to represent Neisco as debtor-in-possession during the Chapter XI proceeding, to propose an arrangement with Neisco's general unsecured creditors and to provide other legal services in connection with the Chapter XI proceeding, defendant, through its Trustees and representatives, acting within the State of New York, unconditionally promised and agreed that it would take all necessary steps and furnish all of the funds required to confirm any arrangement or plan acceptable to Neisco's general unsecured creditors, including payment for the legal services to be rendered by plaintiff in the Chapter XI proceeding and all other administration expenses of said proceeding.

TWENTY-EIGHTH: That at and during the time of the aforesaid agreement between the parties as alleged in paragra TWENTY-SEVENTH herein, the plaintiff and defendant knew that Neisco prior to October 31, 1969 and thereafter, suffered financial setbacks and losses resulting in the inability of Neisco to pay its debts as they became due, and that any plan or arrangement between Neisco and its general unsecured creditors and the payment of any administrative expenses including payment for the legal services to be rendered by plaintiff in the aforesaid Chapter XI proceeding would be wholly and completely dependent upon the defendant furnishing all of the funds required to confirm said arrangement or plan acceptable to Neisco's general unsecured creditors, including the payment for legal services rendered by plaintiff in the Chapter XI proceeding and all other administrative expenses of said proceedings, and said parties entered into their aforesaid agreement with full knowledge of said facts and in reliance thereon.

TWENTY-NINTH: That the defendant has failed and neglected to perform the conditions of the said agreement on its part, in that the defendant has refused, without just cause or excuse, to furnish the funds required to confirm the arrangement obtained through plaintiff's efforts which were acceptable to Neisco's general unsecured creditors and to proceed with confirmation or to furnish any of the other funds required as hereinabove alleged, although payment of said funds has been duly demanded.

THIRTIETH: That by reason of the foregoing no order of confirmation was entered in the Chapter XI proceeding, and on March 22, 1972 Neisco was adjudicated a bankrupt solely for the reason that the defendant has failed and refused to furnish the funds required to confirm the arrangement and to proceed with confirmation or to furnish any of the other funds required as hereinabove alleged.

THIRTY-FIRST: That by reason of the foregoing, plaintiff has sustained damages in the sum of $75,731.06, representing the balance due plaintiff for the fair and reasonable value of the legal services rendered and disbursements incurred by plaintiff in the aforesaid Chapter XI proceeding, in the total sum of $100,731.06, no part of which has been paid except the sum of $25,000.

WHEREFORE, plaintiff demands judgment against the defendant as follows:

(a) On the first cause of action for the sum of $75,731.06;

(b) or in the alternative, on the second cause of action for the sum of $75,731.06, and such exemplary damages as shall be awarded by this Court;

(c) or in the alternative, on the third cause of action in the sum of $75,731.06, all together with appropriate interest thereon from the 22nd day of March, 1972, together with the costs and disbursements of this action.

BALLON, STOLL & ITZLER
Attorneys Pro Se
Office and P.O. Address
1450 Broadway
New York, New York 10018

By ____________________
A Member of the Firm

AMENDED COMPLAINT

(reproduced herein at pages A-22 to A-30)

PLAINTIFF'S ANSWERS TO INTERROGATORIES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---x

BALLON, STOLL & ITZLER,

72 Civ. 2916

Plaintiff,

-against-

ANSWERS TO INTERROGATORIES

THOMAS J. DUFFEY, HERMAN A. LUEKING, JR., ALBERT D. MATHESON, WILLIAM J. KENNEDY, JOHN A. MURPHY, JACK A. SHEETZ, JOHN SPICKERMAN, FRANK E. FITZSIMMONS, ROBERT HOLMES, DONALD PETERS, WILLIAM PRESSLER, ODELL SMITH, ROY L. WILLIAMS, FRANK H. RANNEY and JOSEPH MORGAN, Not Individually But as Trustees Under a Common Law Trust of the Central States Southeast and Southwest Areas Pension Fund,

Defendants.

---x

Plaintiff answering the interrogatories propounded by the defendants, pursuant to the provisions of Rule 33 of the Federal Rules of Civil Procedure, alleges as follows:

1. The basis for the New York State Supreme Court jurisdiction (prior to removal of this action to this Court upon defendant's petition pursuant to 28 USC § 1441) is Section 302(a) of the New York State Civil Practice Law and Rules, in that defendants transacted business and committed tortious acts within the State of New York, to wit, entered into an agreement with plaintiff, acted in concert with plaintiff thereunder, and perpetrated fraud upon the plaintiff, as more particularly hereinafter set forth.

(a) The business transactions of the defendants consisted of the conferences with plaintiff in the State of

New York from on or about November 11, 1969 through March 22, 1972. During said periods defendants, by their agents, employees and/or representatives, attended conferences and meetings with members of plaintiff and officers and representatives of Neisco, as well as hearings before the United States Bankruptcy Court involving the Chapter XI proceeding of Neisco, in New York City, at the offices of Ballon, Stoll & Shyman, 1450 Broadway, New York City, the offices of Neisco, 545 Madison Avenue, New York City, the offices of Sol Eisenrod, Esq., 420 Madison Avenue, New York City, and the courthouse, Foley Square, New York City, relating to the financial affairs of Neisco and its subsidiaries, the financing of Neisco, and its Chapter XI proceeding, and various matters involved in said Chapter XI proceeding and related subjects.

(b) The tortious acts committed by defendants during the period November 11, 1969 through March 22, 1972, and at the places set forth in subdivision (a) above, consisted of false and fraudulent representations, warranties and statements made by said defendants and their representatives (in particular Joseph Radom, Esq., Joseph Teitelbaum, Esq., Leonard Melman, Irwin Rugendorf (accountant), Albert D. Matheson and Murray Weisser (accountant)), to plaintiff, that said defendants would take all steps necessary to furnish all of the funds required and perform all the acts necessary on their part to be performed, to confirm a plan of arrangement by Neisco in said Chapter XI proceeding, including payment for the legal services rendered by plaintiff and all other administration expenses of said proceeding.

(c) Letters were sent by plaintiff to defendants' representatives on March 30, 1970, April 8, 1970 and April 21, 1970.

2. and 3. On or about October 31, 1969 plaintiff received telephone calls and had subsequent conferences and discussions with George Horvath, president of Neisco; also saw certain financial statements in possession of Neisco and defendants, and others; also discussions and conferences with representatives of defendants and certain of defendants; copies of lien instruments running in favor of defendants; financial statements aforementioned.

4. (a) and (c) The promises set forth in paragraph SEVENTH of the complaint were oral, and were made at virtually all meetings attended by plaintiff with defendants and/or their representatives, on the telephone and in the Bankruptcy Court. The defendants were represented by Joseph Teitelbaum, Esq., Albert D. Matheson, Thomas J. Duffey, Al Baron, Esq., Murray Weisser (accountant), Joseph Radom, Esq., Sol Eisenrod, Esq., Leonard Melman, and Irwin Rugendorf (accountant) and Lawrence Vogel, Esq. Plaintiff was represented by Frederick E. M. Ballon and at times by Ronald S. Itzler.

(b) Not applicable.

5. During the period between October 31, 1969 and March 22, 1972, plaintiff duly performed its part of the aforementioned agreement with the defendants by performing all legal

services in said Chapter XI proceeding, including without limitation the preparation and filing of the petition and related documents, representation of Neisco in its negotiations and conferences with creditors resulting in an agreed arrangement (a copy of which plan is annexed hereto and made a part hereof as Exhibit A), appearances in the Bankruptcy Court before the Referee, conferences, meetings and discussions with representatives of defendants and Neisco, preparation of numerous petitions, affidavits, orders, schedules and collateral documents required in the Chapter XI proceeding, all of which took in excess of 1,600 hours in total time involved. Defendants failed and refused to permit the approved plan of arrangement to be confirmed by wilfully and deliberately failing and refusing to furnish the funds necessary to confirm said arrangement proceeding, including payment for the legal services rendered by plaintiff in said proceeding, and all other administration expenses thereof. Plaintiff received $25,000 on account of the services and disbursements.

6. Demand for payment of plaintiff's legal fees was made upon defendants on May 16, 1972. A copy of plaintiff's invoice is annexed hereto and made a part hereof as Exhibit B. Defendants have failed to pay for said services, except that plaintiff received $25,000 as aforementioned, on account.

7. Plaintiff's damages are computed as follows:

The fair and reasonable value of services rendered by plaintiff	$100,000.00
Disbursements (telephone calls, photostats, travel, records etc.)	731.06
Total	$100.731.06
Received on account	25,000.00
Balance due	$ 75,731.06

8. (a) and (b) Oral. Also written to extent confirmed by plaintiff in the aforementioned letters of March 30, April 8 and April 21, 1970.

(c) See answer to interrogatory (b) above.

9. (a), (b) and (c) See answer to interrogatories 5 and 7 above.

10. The representations were false, deceptive, fraudulent, deceitful and misleading, in that defendants never intended to furnish the necessary funds to confirm the arrangement proceeding, including payment for legal services rendered by plaintiff, and all other administration expenses of the aforementioned Chapter XI proceeding. The particular conferences, meetings and discussions among the defendants involving their deliberate failure and refusal to furnish the necessary funds required and to make the promised payments are matters solely within the exclusive knowledge of the defendants.

11. Personal knowledge of plaintiff and the records on file in said Bankruptcy Court. The discussions, conferences and meetings among representatives of the defendants, plaintiff and creditors of Neisco, and the hearings in said Bankruptcy Court. Some of the particular court appearances were on February 24, April 16, May 12, September 17, October 20, November 4, November 19, 1970; January 19, July 8 and September 2, 1971.

12. See answer to interrogatory 4 above.

13. Conferences and meetings with defendants and their representatives. Accountants' reports and statements.

Investigations made by defendants and their representatives of the books, records and affairs of Neisco. Hearings in the said Bankruptcy Court on February 24, April 16, May 12, September 17, October 20, November 4, November 19, 1970; January 19, July 8, September 2, 1971, and on other court appearances.

14. (a) Personal knowledge of plaintiff; conferences and discussions among representatives of defendants, creditors of Neisco, and plaintiff; hearings before the Referee in the Bankruptcy Court.

(b) Joseph Radom, Sol Eisenrod, Irwin Rugendorf, Lawrence Vogel.

(c) Hearings before the Referee aforementioned.

Dated: New York, New York
January 25, 1974

BALLON, STOLL & ITZLER

By: ______________________
A Member of the Firm
Attorneys Pro Se
1450 Broadway
New York, New York 10018
(212) 354-9000

EXHIBIT A TO PLAINTIFF'S ANSWERS TO INTERROGATORIES -- DEBTOR'S ARRANGEMENT FOR NEISCO, INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

------------------------------X

In the Matter

-of-

NEISCO, INC.,

Debtor.

------------------------------X

In Proceedings For
An Arrangement
No. 69-B-[illegible]

DEBTOR'S ARRANGEMENT

The above named debtor proposes the following arrangement:

1. ADMINISTRATION

All costs and expenses of the proceeding are to be paid in cash, upon confirmation hereof, or are to be paid as otherwise agreed upon between the debtor and the administration creditors.

2. PRIORITY CLAIMS

All debts entitled to priority in payment are to be paid in full upon confirmation hereof, or are to be paid as otherwise agreed upon between the debtor and the priority creditors.

3. UNSECURED CLAIMS

All general unsecured claimants shall be paid [illegible]% of their claims, without interest, in cash upon confirmation of this arrangement.

Dated: New York, New York
April 15, 19[illegible]

NEISCO, INC.

/s/ Ernest V. Horvath
President

[illegible]
Attorneys for Debtor
1450 Broadway
New York, New York 10018

BEST COPY AVAILABLE

EXHIBIT B TO PLAINTIFF'S ANSWERS TO INTERROGATORIES -- INVOICE FROM BALLON, STOLL & ITZLER TO CENTRAL STATES SOUTHEAST AND SOUTHWEST AREAS PENSION FUND

May 16, 1972

Central States Southeast and
Southwest Areas Pension Fund
29 East Madison Street
Chicago, Illinois

Re: Neisco, Inc. Chapter XI Proceeding in the United States District Court for the Southern District of New York	$100,000.00
Disbursements	731.06
TOTAL	$100,731.06
Received on Account	25,000.00
Balance Due	$ 75,731.06

PLAINTIFF'S INTERROGATORIES TO DEFENDANTS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---x

BALLON, STOLL & ITZLER,

72 Civ. 2916

Plaintiff,

-against-

INTERROGATORIES TO DEFENDANTS

THOMAS J. DUFFEY, HERMAN A. LUEKING, JR., ALBERT D. MATHESON, WILLIAM J. KENNEDY, JOHN A. MURPHY, JACK A. SHEETZ, JOHN SPICKERMAN, FRANK E. FITZSIMMONS ROBERT HOLMES, DONALD PETERS, WILLIAM PRESSER, ODELL SMITH, ROY L. WILLIAMS, FRANK H. RANNEY, and JOSEPH MORGAN, not individually but as Trustees under a Common Law Trust of the Central States Southeast and Southwest Areas Pension Fund,

Defendants.

---x

SIRS:

Plaintiff requests that the defendants answer, under oath, in accordance with Rule 33 of the Federal Rules of Civil Procedure, the following interrogatories:

1. State if during the period between October 31, 1969 and March 22, 1972, Joseph Teitlebaum and Joseph S. Radom were retained to act for and on behalf of the defendants with respect to any transactions or matters involving the business and financial affairs of Neisco, Inc. (hereinafter referred to as "Neisco").

2. If the answer to interrogatory "1" is yes, state when the said individuals were retained and describe any and all authorities delegated to them with respect to said matters.

3. State what employment and/or association, if any, the following individuals had with the defendants during the period between October 31, 1969 and March 22, 1972, indicating the date of their employment and/or association, their duties and/or responsibilities, and a description of any transactions participated in by them individually or jointly with respect to any business or financial matters involving Neisco, the defendants and the plaintiff: Albert D. Matheson, Thomas J. Duffey,

Al Baron, Murray Weisser, George Becker, Leonard Melman, Saul Eisenrod, Alan Dorfman and Irwin Rugendorf.

4. State whether or not any meetings were held by the defendants or any of their committees or sub-committees at which the business and/or financial affairs of Neisco were discussed.

5. If the answer to interrogatory "4" is yes, state:

(a) The times, dates and places of each and every meeting.

(b) The identity of the committees conducting said meetings.

(c) Who was present at said meetings.

(d) What was discussed at said meetings with respect to the affairs of Neisco, indicating what was said by each individual present at said meetings.

6. State whether or not any transcribed minutes of the aforesaid meetings, in response to interrogatory "5" were prepared. If so, identify said meetings at which minutes were taken, and indicate where the minutes are now located.

7. State whether or not any meetings were had by the defendants or any of their committees, at which time the following specific matters were discussed and considered:

(a) The Chapter XI proceeding filed by Neisco.

(b) Any plan or arrangement proposed by Neisco during its Chapter XI proceeding.

(c) The amount of funds required to confirm or approve any plan proposed by Neisco in its Chapter XI proceeding.

(d) Any contributions by defendants of any funds to Neisco to provide working capital, or confirm any plan or proceeding proposed by Neisco in the Chapter XI proceeding, or for any other purpose.

8. If the answers to any of the questions in interrogatory "7" is yes, state:

(a) Who was present at said meetings.

(b) What was discussed at said meetings, indicating what was stated by each of the parties present.

(c) If any minutes of the meetings were transcribed, and if so, identify same and where they are now located.

(d) If any memoranda, documents, notes, or other papers or correspondence were prepared by anyone for or on behalf of the defendants concerning any of the matters discussed at said meetings. If so, identify said documents and indicate where said writings are located.

9. State whether or not any meetings were had between any representatives on behalf of the defendants and any representatives on behalf of the plaintiff in Chicago and/or New York City concerning the business, financial and legal affairs of Neisco, during the period from on or about and between October 31, 1969 and November 24, 1969.

10. If the answer to interrogatory "9" is yes, state:

(a) When and where such meetings took place.

(b) Who was present at said meetings on behalf of each of the parties thereto.

(c) A full and complete description of the discussions between the parties at said meetings, indicating what was said by each of the parties present.

(d) Whether or not any memoranda or other writings were prepared by any representative of the defendants concerning any of the matters discussed at such meetings. If so, identify said documents, disclosing who prepared same and their present location.

(e) If any correspondence was exchanged between defendants and any of the parties present at said meetings, concerning their discussions or otherwise confirming any agreements or understandings between the parties.

(f) If such correspondence was forwarded and was received, identify same by indicating the dates thereof, and the parties to whom or from whom the correspondence was exchanged.

11. State whether or not any representatives acting for or on behalf of the defendants were present and participated in any of the hearings before Honorable Roy Babbitt, of the United States District Court, Southern District of New York (in Bankruptcy) involving the Chapter XI proceeding filed by Neisco during the period of November 24, 1969 through March 22, 1972.

12. If the answer to interrogatory "11" is yes, describe each and every representative acting for or on behalf

of the defendants who was present at said hearings, indicating in what manner and in what respects said representatives participated at said hearing and what was stated by said representatives at said hearing.

13. State whether or not any of the hearings referred to in interrogatory "11" were reviewed or discussed in any manner or form at any meetings of the defendants or any of their committees.

14. If the answer to interrogatory "13" is yes, state:

(a) At which meeting or meetings the hearings involving the Chapter XI proceeding of Neisco were discussed.

(b) Who was present.

(c) What was discussed at said meetings, indicating what was stated by each of the parties present at said meetings.

(d) If any written transcript of the minutes or other writings were made of said meetings, and if so, identify same and indicate where they are now located.

15. State whether or not plaintiff demanded from the defendants payment of any legal fees and disbursements with respect to services plaintiff rendered in the Chapter XI proceeding involving Neisco.

16. If the answer to interrogatory "15" is yes, state:

(a) Whether the demands were written or oral. If written, set forth a true copy or copies of same.

(b) If oral, state when and where the demands were made, who it is claimed acted on behalf of each of the parties in giving and receiving said demands, and the substance thereof.

17. State whether or not defendants have contributed any funds to Neisco during the period of November 24, 1969 through March 22, 1972.

18. If the answer to interrogatory "17" is yes, state:

(a) The date of such payment.

(b) The amount thereof.

(c) The purposes for which said payments were given.

(d) Whether or not any meetings were held by the defendants or any of their committees for the purpose of discussing or considering said payments, and if so, state when and where such meetings were held, who was present, and disclose a complete description of what was said by each of the parties present at said meetings.

19. If the answer to interrogatory "18" is yes, state whether or not minutes of said meetings were transcribed, and if so, indicate where said minutes are now located.

20. State whether or not defendants made any payments to Neisco for or on account of plaintiff's legal fees with respect to Neisco's Chapter XI proceeding.

21. State whether or not the defendants or any of their committees at any time during the period between October 31, 1969 and March 22, 1972, discussed any plans to discontinue making payments of any kind to Neisco.

22. If the answer to interrogatory "21" is yes, state:

(a) When and where such meetings took place.

(b) Who was present at said meetings.

(c) A full and complete description of the discussions at said meetings.

(d) Whether or not any minutes or other writings or memoranda were prepared at said meetings, and if so, identify same indicating where said writings are located.

23. State whether or not the defendants, or any of their committees at any time held meetings at which it was resolved not to give any funds to Neisco to confirm any plan or arrangement proposed at the Chapter XI proceeding of Neisco.

24. If the answer to interrogatory "23" is yes, state:

(a) When and where such meetings were held.

(b) Who was present at said meetings.

(c) A full and complete description of the discussions had at said meetings, indicating what was said by each of the parties present.

(d) Whether or not any minutes or other writings were prepared at said meetings, and if so, identify same indicating where said writings are now located.

PLEASE TAKE FURTHER NOTICE, that a copy of such answers must be served upon the undersigned within 15 days after service of these interrogatories.

Dated: New York, New York
November 16, 1973

Yours, etc.,

BALLON, STOLL & ITZLER
Attorneys Pro Se
Office and P.O. Address
1450 Broadway
New York, New York 10018

TO: SCHAEFFER, DALE, VOGEL & TAVROW, ESQS.
Special Counsel to Joseph S.
Radom, Attorney for Defendants
1501 Broadway - Suite 2100
New York, New York 10036

DEFENDANTS' ANSWERS TO PLAINTIFF'S INTERROGATORIES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

BALLON, STOLL & ITZLER, :

Plaintiff, : 73 Civ. 2916
JUDGE H. R. TYLER, JR.

- against - :

THOMAS J. DUFFEY, HERMAN A. LUEKING, JR., ALBERT D. MATHESON, WILLIAM J. KENNEDY, JOHN A. MURPHY, JACK A. SHEETZ, JOHN SPICKERMAN, FRANK E. FITZSIMMONS, ROBERT HOLMES, DONALD PETERS, WILLIAM PRESSLER, ODELL SMITH, ROY L. WILLIAMS, FRANK H. RANNEY, AND ROSEPH MORGAN, both individually and as Trustees under a Common Law Trust of the Central States Southeast and Southwest Areas Pension Fund, JOSEPH RADOM, individuall, ALLEN DORFMAN, individually, and FIRST DOE through FOURTH DOES inclusive, :

Defendants

- -X

DEFENDANTS' ANSWER TO
PLAINTIFF's INTERROGATORIES

The Trustees (the "Trustees") of the Central States Southeast and Southwest Areas Pension Fund (the "Fund"), defendants in the above captioned proceedings, make the following Answers to Plaintiff's Interrogatories. Defendants reserve the right to amend, modify, supplement, or change any answer at any time hereafter as they deem reasonable or necessary in accordance with Rule 26(e) of the Federal Rules of Civil Procedure.

1 & 2. Messrs. Joseph Teitelbaum and Joseph Radom represented the Fund respecting all legal matters arising from the Fund's transactions, as lenders, and Neisco, Inc., as

borrower, during the period October 31, 1969 and March 22, 1972.

3. During the period commencing October 31, 1969 and ending March 22, 1972,

(a) Messrs. Albert D. Matheson and Thomas J. Duffey were Trustees of the Fund and were members of its Steering Committee. They were examined at length by the Plaintiff at deposition hearings previously held.

(b) Mr. Al Baron served on the staff of the Fund and concentrated his efforts to protect the Fund's interests in defaulted loans.

(c) Mr. Morris Weiser was retained by the Fund as the Certified Public Accountant to audit the Neisco financial reports.

(d) Mr. George Becker is affiliated with George Becker & Company of Chicago, Illinois. This firm performs appraisals for the Fund, but the Trustees do not believe that the said firm made any appraisals of the Neisco properties during the period in question.

(e) Mr. Leonard Meldman is an independent practitioner who, from time to time, acted on behalf of the Fund as a legal counsel.

(f) Mr. Solomon Eisenrod is an independent financial and management consultant who assisted the Fund in formulating business decisions respecting its dealings with Neisco after the filing of its Chapter XI petition.

(g) Mr. Allen Dorfman served as Special Consultant to the Fund.

(h) Mr. Irwin Rugendorf, an accountant, was designated by the Fund as its agent in counter-signing all checks drawn by Neisco, as Debtor-in-Possession, during the pendency of the Arrangement proceedings.

4. Yes.

5. The following responses are predicated upon the assumption that plaintiff seeks discovery for the period commencing October 31, 1969 and ending on March 22, 1972:

(a) On November 21, 1969, two telephone conference calls were held. The subject of the two telephone conference calls, as they relate to Neisco, were recorded in Minutes, a copy of which is attached as Exhibit A.

(b) On November 17, 1969, a meeting of the Steering Committee was held. The subject of the meeting as it relates to Neisco was recorded in Minutes, a copy of which is attached as Exhibit B.

(c) On December 11, 1969, a Steering Committee meeting was held. The subject of the meeting as it relates to Neisco was recorded in Minutes, a copy of which is attached as Exhibit C.

(d) On May 5, 1970, a meeting of the full Board of Trustees was held. The subject of the meeting as it relates to Neisco was recorded in Minutes, a copy of which is attached as Exhibit D.

(e) On June 22, 1970, a Steering Committee meeting was held. The subject of the meeting as it relates to Neisco was recorded in Minutes, a copy of which is attached as Exhibit E.

(f) On June 23, 1970, a meeting of the full Board of Trustees was held. The subject of the meeting as it relates to Neisco was recorded in Minutes, a copy of which is attached as Exhibit F.

(g) On July 31, 1970, a Steering Committee meeting was held. The subject of the meeting as it relates to Neisco was recorded in Minutes, a copy of which is attached as Exhibit G.

(h) On Aug. 6, 1970, a meeting of the full Board of Trustees was held. The subject of the meeting as it relates to Neisco was recorded in Minutes, a copy of which is attached as Exhibit H.

(i) On February 5, 1971, a meeting of the full Board of Trustees was held. The subject of the meeting as it relates to Neisco was recorded in Minutes, a copy of which is attached as Exhibit I.

(j) On June 11, 1971, a meeting of the full Board of Trustees was held. The subject of the meeting as it relates to Neisco was recorded in Minutes, a copy of which is attached as Exhibit J.

(k) On September 23, 1971, a meeting of the full Board of Trustees was held. The subject of the meeting as it relates to Neisco was recorded in Minutes, a copy of which is attached as Exhibit K.

(l) In April 1971, a meeting of the Administrative Loan Committee was held. The subject of the meeting as it relates to Neisco was recorded in Minutes, a copy of which is attached as Exhibit L.

(m) Numerous informal meetings were held among various members of the Steering Committee, counsel and other members of the professional staff of the Fund, at which the business and financial affairs of Neisco were discussed. The following were some of the items involved in such discussions:

(i) the feasibility of the Arrangement plans submitted from time to time;

(ii) the problems encountered with the Internal Revenue Service in attempting to work out a settlement of and payment schedule for the outstanding tax obligations of Neisco;

(iii) the necessity of retaining, during the pendency of the Chapter XI proceeding, George and Ernest Horvath as employees of Neisco;

(iv) the financial reports of Wasserman and Tatem respecting the business operations of Neisco during the pendency of the Chapter XI proceeding;

(v) the sources of money to fund the Neisco Arrangement;

(vi) the necessity of retaining Neisco's New York offices;

(vii) Neisco's relationship to Masmo, Inc., Montmartre, Inc., Mt. Clemens Industries, Inc. and other affiliates;

(viii) Neisco's operational problems;

(ix) whether it was in the best interest of the Fund to support Neisco's Plan of Arrangement.

6. The meetings of the Trustees and the Steering Committee of the Fund to which reference is made in sub-paragraph (a) through (l), inclusive of the Fund's Answers to plaintiff's Interrogatory #5 were stenographically recorded. The original transcript of Minutes, copies of which have been attached herewith to the Fund's Answer to plaintiff's Interrogatory #5, are at the Fund's offices 8550 West Bryn Mawr, Chicago, Illinois.

7 & 8. The information requested by these Interrogatories is contained in the Fund's Answer to plaintiff's Interrogatory #5.

9. Yes.

10. The Fund states, upon information and belief, that:

(a, b, & c) A meeting was held at the offices of Mr. Allen Dorfman, LaSalle Street, Chicago, Illinois, prior to the filing of Neisco's Chapter XI Petition. Present at this meeting were Messrs. Dorfman, Teitelbaum, Jack Polish, Frederick E. M. Ballon, Radom, and Baron. The Fund can not state with specificity the observations made by any of the participants except that the financial plight of Neisco was the principal subject discussed. Mr. Ballon advised the representatives of the Fund that Neisco had no alternative but to seek relief under the provisions of Chapter XI of the Bankruptcy Act. Mr. Ballon or Mr. Polish further reported that Neisco had no operating funds and that it was seeking additional financial assistance from the Fund.

A subsequent meeting was held at the offices of Mr. Ballon in New York City. Present in addition to Mr. Ballon were Messrs. Radom, Teitelbaum, Meldman, and Polish. The time-frame for the filing of the Chapter XI Petition was discussed. Representatives of the Fund stated that the Trustees would be contacted to determine whether they would sanction a loan of $1,500,000 to Neisco as a Debtor-in-Possession following the filing of a Chapter XI Petition. The mechanics of making such a loan, if authorized by the Trustees, was also discussed. Discussions were also had relative to devising a means of safe-guarding any loan proceeds by imposing some form of control through an agent of the Trustees. It was suggested that Mr. Rugendorf would counter-sign all checks on behalf of the Trustees provided that the Trustees approved a loan authorized by the Referee in Bankruptcy. At this meeting the representatives of the Fund were advised by the representatives of the Ballon law firm that it had prepared a Petition to proceed under the provisions of Chapter XI and that this Petition would be filed within a brief period of time thereafter.

(d) The Fund did not prepare any written memoranda with respect to the meetings or discussions with the Plaintiff during the period of time in question.

(e & f) The files of the Fund do not reflect that any correspondence was exhcanged between the Fund and any of the Plaintiff's representatives who were present at the meetings of the parties above mentioned or otherwise confirming any understanding between the parties. The attached, however, as Exhibits, M, N, O, P, and Q, are copies of letters between various individuals that were culled from the files of Mr. Radom.

11. Yes.

12. Messrs. Schaeffer, Dale, Vogel & Tavrow, Mr. Radom, and Mr. Meldman appeared from time to time as counsel for the Fund at the hearings conducted before Bankruptcy Judge Babitt. The Fund is informed that all of the Neisco hearings held in the Bankruptcy Court were stenographically reported and that transcripts of such hearings are either in the possession of the Plaintiff or otherwise officially available to it.

13 & 14. Oral reports were regularly made to the Fund's Trustees by their counsel as to developments at the hearings held before Bankruptcy Judge Babitt. Where such reports were made at formal meetings of the Fund's Board of Trustees or its Steering Committee they were reflected in the Minutes of those meetings as more fully described in the Fund's answer to Plaintiff's Interrogatory #5.

15 & 16. After Neisco was adjudicated a bankrupt and prior to the commencement of this law suit, oral demand was made by Ronald Itzler, a partner of plaintiff, upon the Fund's counsel.

17,18 & 19. The funds advanced by the Defendants to Neisco as Debtor-in-Possession during the period in question are as follows:

11/24/69	$ 85,000.00
11/26/69	163,450.00
11/26/69	65,500.00
12/02/69	183,500.00
12/11/69	170,000.00
12/17/69	170,000.00
12/19/69	266,000.00
12/30/69	150,000.00
1/08/70	163,000.00
6/23/70	50,000.00
9/10/70	50,000.00
12/01/70	100,000.00
	$1,618,450.00

These loans were made to enable the Debtor to carry on its manufacturing operations. The other information sought by these Interrogatories is reflected in the Defendants' Answers to Plaintiff's Interrogatory #5.

20. No.

21. Yes.

22,23, & 24. The information requested is contained in the Fund's Answers to Plaintiff's Interragotory #5.

Yours, etc.

SCHAEFFER, DALE, VOGEL & TAVROW
Attorneys for Defendants

By:
Member of the Firm
410 Park Avenue
New York, New York 10022

VERIFICATION

STATE OF MICHIGAN)
:ss
COUNTY OF WAYNE)

ALBERT D. MATHESON , being duly sworn, deposes and says that deponent is one of the defendants in the within action and a Trustee of the Central States Southeast and Southwest Areas Pension Fund; that deponent has read the foregoing Defendants' Answer to Plaintiff's Interrogatories and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

Albert D. Matheson
(ALBERT D. MATHESON)

Sworn to before me, this
30th day of January 1974.

Wanda B Staszewski
Notary Public
Wayne County, State of Michigan
My commission expires: 11/19/77
(Wanda B. Staszewski)

EXHIBIT A TO DEFENDANTS' ANSWERS TO INTERROGATORIES -- MINUTES OF CONFERENCE CALLS MADE NOVEMBER 21, 1969 RE: NEISCO, INC.

CONFERENCE CALL
NOVEMBER 21, 1969
10:30 A.M. & 11:00 A.M.

In the first Conference Call held this date the following Trustees participated: Messrs. Smith, Morgan, Presser, Spickerman, Sheetz and Kennedy. Other participants in the call were: Allen Dorfman, Special Consultant for the Fund, Joseph D. Teitelbaum, Attorney, Joseph Radom, Attorney, Morris Weiser, Accountant and Gladys M. Kibort, Assistant to Francis J. Murtha.

1. HORVATH (NEISCO)

Attorney Teitelbaum stated that a double proposal was being made in connection with Montmartre. We are to enter into an agreement with Horvath that subject to final control, we will operate until April 30th. We are trying to avoid receiver, and work out some other way of handling Montmartre so that by April 30th, if possible, we can enter into a new arrangement or new deal. This is a six month deal.

The Neisco and Masmo accountants have told us it will take an investment of $1,500,000.00 for inventory and working capital plus $155,000.00 voted last week. The difference between that and $1,500,000.00 is what they are asking for to be voted to keep this mill operating. They will have to close if they don't come up with this money. He is going into Chapter 11 proceedings. He will be accounted to the Fund for this money. Mr. Rugendorf will be co-signator on the checks. All delinquent debts will be frozen. Attorney Joseph Radom will approve. Current items of operation is the only thing that can be paid. Attorney Radom and Teitelbaum feel that there is no way of eliminating the risk for the future. We are paying in $155,000.00 and we owe $80,000.00 now, from one week to ten days this amount could come in.

Motion was made by Trustee Presser, seconded by Trustee Kennedy and unanimously carried that as long as one of our people will be on the check and our man will be going in to take over the actual formation of the company, I move that we accept this request rather than funds be disbursed after information has come back and the necessary information is available to us and provided this is favorable. ($1,345,000.00 whole amount) These people that are handling this operation should be given proper authorization to expend what funds are necessary to keep on this operation available, based on the necessary information.

4. **R & A MOTEL**

This is a motel in Forestview, Illinois. This has been in default. Approximately $700,000.00 is our investment at this time. We have the following proposal:

$40,000.00 in cash
Guarantee the next $175,000.00

He will pay $4,500.00 a month toward balande and will liquidate in 26 or 27 years. Mr. Dorfman recommends approval.

Motion was made by Trustee Presser, seconded by Trustee Spickerman and unanimously carried to approve.

5. **F. W. STRECKER CO.**

Trustee Kennedy stated that Mr. Strecker owes the government about $100,000.00. We were going to take over part of his operation. The other day we got about $4,000.00 out of him. He thinks he can get the Fund cleared out of this situation. This company has to be closed. A proposal was made to the government that we would take over 13 pieces of equipment.

Motion was made by Trustee Presser, seconded by Trustee Spickerman and unanimously carried that Trustee Kennedy be given authority that he needs to handle this matter in the best possible way.

SECOND CALL
11:00 A.M.

In the second Conference Call held this date, the following Trustees participated: Messrs. Murphy, Peters, Lueking, Ranney and Holmes. Other participants in the call were: Allen Dorfman, Special Consultant for the Fund, Joseph D. Teitelbaum, Attorney, Joseph Radom, Attorney, Morris Weiser, Accountant and Gladys M. Kibort, Assistant to Francis J. Murtha.

1. **HORVATH**

In connection with Montmartre, it has been tentatively agreed subject to the Trustees approval that we would enter into an agreement for a period of 6 months. All income and expenses would be supervised by our representatives. We would then know what is coming in and out of the hotel. We would know by then if we would rewrite this or take over foreclosure. In that case it has been proposed that we buy one of the leaseholds relating to Montmartre. If we foreclose, we would get complete ownership of that property. The north half is owned by two insurance companies and the south half is owned by four individuals, residents of Miami. It is suggested that we buy the part owned by the two insurance companies for $1,135,000.00. If we needed to put in additions on the property, we would have 350 feet in which to do this. The first group approved the purchase of this leasehold. Joyce and Ennis are the two names suggested as people who must countersign all checks out of that hotel. We will have complete control in as far as records, books, etc. We will have a man there daily. Income will be checked daily. The property consists of two leaseholds.

Motion was made by Trustee Ranney, seconded by Trustee Peters and unanimously carried to approve.

NEISCO AND MASMO

Horvath will have to go into Chapter 11 proceedings and will freeze all debts. Anything he discusses will have to be under supervision of court. Mr. Teitelbaum reported that this property is without working capital and will require about $1,350,000.00 in addition to the $155,000. that was recently voted. All checks and financial matters will be subject to our control and our man will countersign. It is impossible to know exactly where the $1,350,000.00 could be lost. The first group voted to put in this man but will make determination of what is feasible.

Motion was made by Trustee Peters, seconded by Trustee Ranney and unanimously carried to approve.

CARL GLICKMAN

We issued a commitment for $16,000,000.00 and we said this would be a participation in a $21,000,000.00 construction program in Cleveland. Was issued at 8% with the understanding that we would have 10% equity position. Our tax attorneys told us that this hurts us with the Internal Revenue Service. The last Trustees meeting, the borrower was to come in and renegotiate the commitment raising from 8% to 8-1/4% and that will give us another $30,000.00 a year and a option to buy equity position. The option period would be for the length of the loan. They also want construction loan to begin in February, 1971. The first group voted to approve.

Motion was made by Trustee Ranney, seconded by Trustee Lucking and unanimously carried to concur in the action of the first group.

MR. DORFMAN: The motion has been made and seconded.

... The motion was put to a vote and carried without dissent ...

MR. DORFMAN: Off the record.

... Discussion off the record ...

MR. TEITELBAUM: In regards to Neisco and the Momart, our understanding is that we are to divide out the two problems -- on the one hand, Momart, and on the other hand, Neisco.

So far as Neisco is concerned, Mr. Weiser has come up with a figure of $1,665,000 as the correct figure. We will defer approval of that figure until a survey is made by someone appointed by us so that we will have additional data on which to base a determination.

So far as the Momart is concerned, we will ask to go forward on the basis which has been previously suggested -- namely, that we will have financial control, but the agreement which was drawn provisionally between us will have to be broadened so that these financial controls include determinations like the sufficiency of cash which is received. We will also have the privilege under the agreement of putting someone on site who can observe and help supervise the operations of the hotel. I think we ought to clarify that in addition to the financial controls which are set up in the agreement, we have to have someone on the premises who is in the position to observe all operations but not to overrule management and control.

MR. RANNEY: I so move.

MR. PETERS: Second the motion.

MR. DORFMAN: You have heard the motion made and seconded. Is there any discussion?

... The motion was put to a vote and carried without dissent ...

MR. DORFMAN: So ordered.

... The meeting was adjourned at 1:15 o'clock p.m. ...

STEERING COMMITTEE
NOVEMBER 17, 1969

Donald Peters
Frank H. Ranney
Allen Dorfman
Alvin Baron
Joseph D. Teitelbaum

EXHIBIT C TO DEFENDANTS' ANSWERS TO INTERROGATORIES -- MINUTES OF DECEMBER 11, 1969 MEETING RE: NEISCO, INC.

Now, I received another letter from Francis Fairlee, who is the same attorney who represented Crompton & Nowells in this loom situation for Neisco. Now, he represents another man who sold to the mills $72,000 of looms, but there is only a $7,290 balance, and he suggests that maybe this lien ought to be picked up as well. Now, would it be appropriate if I turned this over to you, Mr. Matheson?

MR. MATHESON: I understood we took care of the others, didn't we?

MR. TEITELBAUM: Right.

MR. MATHESON: Maybe these aren't the ones we can use.

MR. TEITELBAUM: If I am informed that they are--

MR. MATHESON: If these looms are part of the ones we are operating today, then you might as well put that off.

MR. TEITELBAUM: And put it in the budget.

MR. MATHESON: Sure.

STEERING COMMITTEE
DECEMBER 11, 1969

William Presser, Chairman
Thomas J. Duffey, Chairman (After William Presser left)
Frank H. Ranney
Donald Peters
Champ J. Madigan
Albert D. Matheson

Joseph Teitelbaum
Joseph Radom
Allen Dorfman
Nathan Wolfberg
Morton J. Harris
Harold Silverberg
George Becker
Francis J. Murtha, Jr.
C. P. Chuckray
Morris Weiser

EXHIBIT D TO DEFENDANTS' ANSWERS TO INTERROGATORIES -- MINUTES OF MAY 5, 1970 MEETING RE: NEISCO, INC.

May 5-1970 Full Board

CHAIRMAN SHEETZ: The motion is carried.

Executive Session.

. . . .Executive Session had after which the following proceedings were had . . .

BEST COPY AVAILABLE

CHAIRMAN SHEETZ: This is on Item XIX -on the agenda. The Merger Committee - Item #19.

MR. MATHESON: Shouldn't we have a statement in the record on Montmartre and the lawyers instructed to proceed? Just a statement.

CHAIRMAN SHEETZ: All right.

MR. RADOM: A report was made on the Nizco arrangement proceedings, the Masmo bankruptcy case, the bankruptcy proceedings involving Ernest and George Horwath and also the Montmartre.

The Trustees have instructed counsel for the Fund to proceed with the further negotiations and report further as to the progress and also the recommendations.

CHAIRMAN SHEETZ: Number XIX. Merger of Pension Funds and New Companies.

Ace Reporting Co.—Chicago

FULL BOARD OF TRUSTEES
MAY 5, 1970

Jack A. Sheetz, Chairman
Albert D. Matheson
Champ J. Madigan
Herman A. Lucking, Jr.
Roy L. Williams
Odell Smith
William Preser
Robert Holmes
Donald Peters
Joseph Morgan
Frank H. Ranney

George Jacobsmeyer
David Previant
Max Kunis
Harold Silverberg
Francis J. Murtha
Allen Dorfman
Morton J. Harris
Alvin Baron
Joseph D. Teitelbaum
Joseph Radom
Francis J. Murtha, Jr.
Nathan Wolfberg
Ronald Becker
Morris Weiser

EXHIBIT E TO DEFENDANTS' ANSWERS TO INTERROGATORIES -- MINUTES OF JUNE 22, 1970 MEETING RE: NEISCO, INC.

MR. DORFMAN: No. 15, Masmo.

... Mr. Eisenrod entered the room ...

MR. EISENROD: The subject is the final plan of arrangement that is to be submitted to the court for the reorganization of NEISCO, and also a plan for the reorganization without the court of Nomart. After numerous meetings with George Horvath and his attorney, Fred Balin, Joe Radom and myself, we finally got all of our misunderstandings on paper, and NEISCO has nine different items.

First, the plan of arrangement will provide for payment of creditors of 12-1/2% in cash. This money will come out of the monies previously approved by the Trustees for the reorganization of NEISCO, $1,600,000. NEISCO will repay to Momart the monies that were heretofore advanced by Momart, $85,000. This, too, will come out of the monies committed by the Fund.

The other matters which we agreed to are not important matters, but the one important matter that has to be approved at this time is the retention of Earnest Horvath as a consultant by NEISCO, and the reason for the approval by the Fund is that the Fund will be asked to give a guarantee for the performance of NEISCO. In other words, NEISCO is entering into a contract with Earnest Horvath to pay him a salary of $36,000 a year. In the event of death, $18,000 a year for a period of six years to his widow.

The Horvaths feel that because it is within the province of the Fund to foreclose on its mortgages, that an agreement which is not guaranteed by the Fund for the benefit of NEISCO would have no standing, would have no value to him, so this request now is that the Fund issue what you as Trustees know as a takeout to him for NEISCO's benefit which will go to the benefit of Horvath as long as he works for NEISCO and for the extent of the contract to be paid.

MR. RADOM: I think there should be a period of limitation, though, or dollars - either way.

I might say that Earnest is seventy-two years old at the present time, is not in good health, but, on the other hand, the contract that NEISCO is proposing to enter into with Earnest will provide for consultant agreement for the balance of his life. It seems to me at least that there should be some limitation as to the exposure of the Fund on its take-out, not to exceed X number of dollars. As far as the wife is concerned, she would only be getting a maximum of--

MR. EISENROD: If he dies, the most she could get would be $108,000. The reason for this request is, he requested assignment of one of the insurance policies to his widow, and upon the advice of Joe Radom and myself, this request was turned down, that there should be no returning of any policies.

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So this is a request. But actually the original obligor is NEISCO anyway, and I think eventually NEISCO would have to pay it.

MR. RADOM: If you'll recall, when these matters first developed, the policies were delinquent and the Fund advanced the premiums to keep them in effect. There is $3 million in face value on policies on both Earnest and George. Under the program outlined, Earnest would remain as a consultant of NEISCO and George would no longer be associated in any manner whatsoever with NEISCO. He would confine his activities solely to Momart.

MR. PETERS: We still have those $3 million in policies?

MR. EISENROD: Yes. The Fund has ownership now.

CHAIRMAN PRESSER: What is your recommendation on the time limit?

MR. RADOM: I think, if we convert it to dollars, make it $200,000 maximum, on the employment contract.

MR. DORFMAN: That includes the six years.

MR. EISENROD: That includes everything,

ultimate liability.

There are $5 million of assets there, and the proposal is that this money be spent to preserve the assets.

... Motion was made, seconded and carried to approve the proposal outlined above ...

MR. RADOM: Now, there is one requirement here, and that is the need for more cash in this operation. You may recall that you have advanced $1,360,000 thus far. You did originally agree to underwrite $1,600,000; the other $150,000 is being used for a balloon that was acquired. Now, as of today, there is immediate need for $30,000, and this is being channeled through the court and is being countersigned by Mr. Rubendorf, as you recall--

MR. DORFMAN: They have the authority to release those funds as required up to a total of $1,600,000.

MR. RADOM: Sol just declared that rather than have to come back in a few days, because as soon as the Horvaths are out of it they'll move ahead--

MR. EISENROD: As soon as they are out, I'll be able to go to a bank and arrange a line of

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credit. They refuse to loan any money to NEISCO as long as the Horvaths are there.

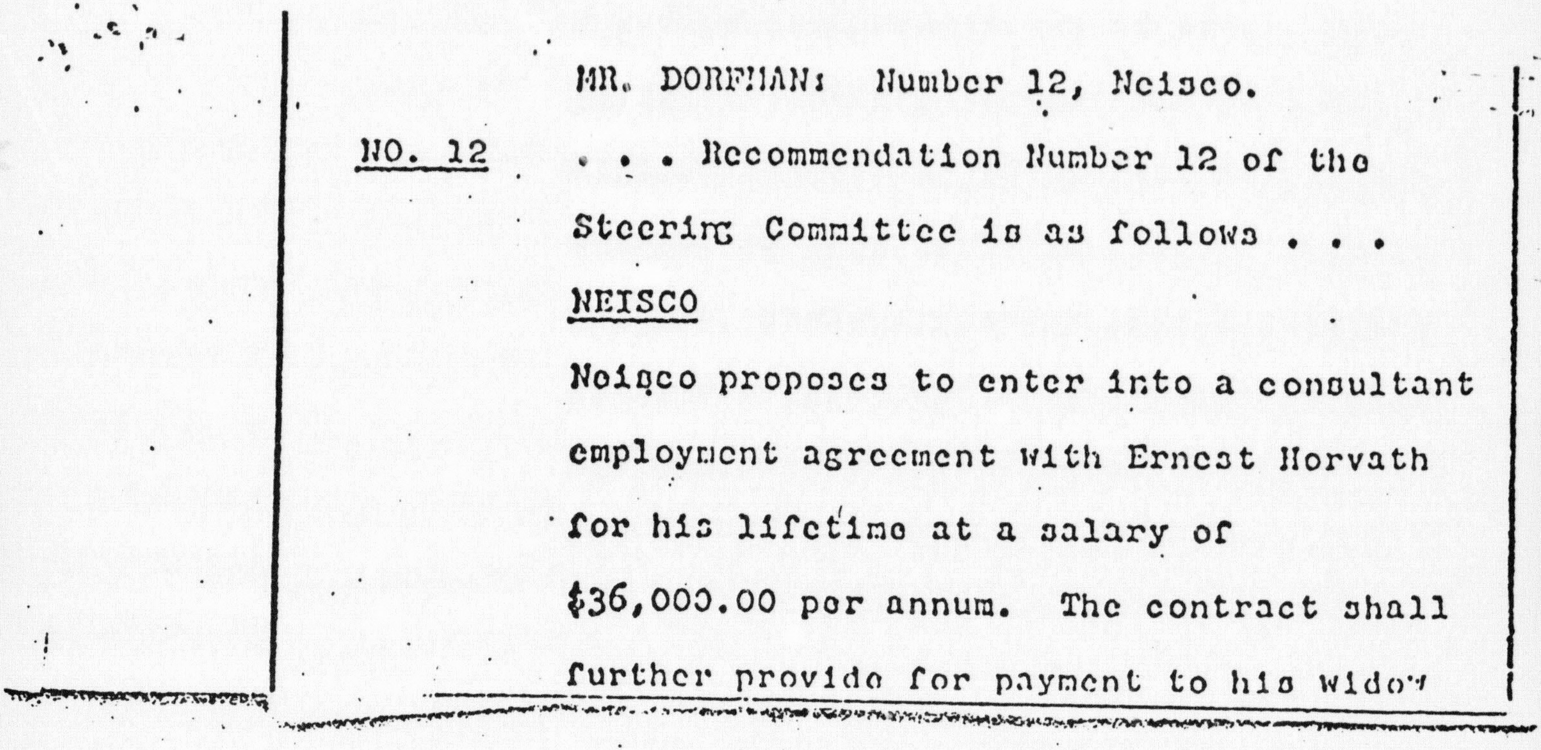
... Motion made, seconded and passed to act accordingly ...

STEERING COMMITTEE
JUNE 22, 1970

William Presser, Chairman
Champ J. Madigan
Albert D. Matheson
Frank H. Ranney
Donald Peters
Thomas J. Duffey

Allen Dorfman
Alvin Baron
Joseph D. Teitelbaum
George Becker
Joseph Radom
Morris Weiser
Francis J. Murtha, Jr.
C. P. Chuckray
Morton J. Harris

EXHIBIT F TO DEFENDANTS' ANSWERS TO
INTERROGATORIES -- MINUTES OF JUNE 23, 1970
MEETING RE: NEISCO, INC.



MR. DORFMAN: Number 12, Neisco.

NO. 12 . . . Recommendation Number 12 of the Steering Committee is as follows . . .

NEISCO

Neisco proposes to enter into a consultant employment agreement with Ernest Horvath for his lifetime at a salary of $36,000.00 per annum. The contract shall further provide for payment to his widow

No. 12 (Cont'd) of $18,000.00 per year for a period of 6 years after Ernest's decease providing she survives him.

The Trustees were requested by Mr. Eisenrod to guarantee the sums payable to E. Horvath and his wife under the consultan agreement in an aggregate amount not to exceed $200,000.00.

The committee recommended approval.

MR. TEITELBAUM: Joe will handle Neisco.

MR. DORFMAN: Joe, do you want to cover Neisco for the gentlemen?

MR. RADOM: First I think we ought to read this memorandum, and if there are any questions I will be glad to answer them.

CHAIRMAN PRESSER: Make your own presentation, Joe, any way you desire. It is going into the record for our benefit.

MR. RADOM: Perhaps I might then best review the background briefly as to the request being made and acted upon yesterday by the Steering Committee.

Neisco and Masmo are presently involved in bankruptcy proceedings in New York City.

Those firms are indebted to the Fund in excess of six million dollars. This is also a part of the complex controlled by George Horvath, and is affiliated with the Montmartre situation in Miami Beach.

We have had many conferences with George Horvath and his counsel in an effort to have him detach himself from the operations of Neisco completely, and arrangements have been worked out recently whereby Sol Eisenrod and his associates, who have some familiarity with the textile industry, are willing to acquire all the capital stock of Neisco, reamortize the obligations owing to the Fund, so that ultimately it will be paid in full, to continue the operations and take it out of the bankruptcy courts completely. Under those circumstances George Horvath would then devote all of his time and efforts to the Montmartre situation, but Ernest Horvath would continue, because Mr. Eisenrod feels that the continuity of the Horvath name is required to carry on the operations of Neisco.

Because of Neisco's precarious financial condition, Ernest Horvath, who is

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presently seventy-two years of age, desires to have an employment contract with Neisco for the balance of his life, and Mr. Eisenrod thinks it is desirable to give it to him.

On the other hand, recognizing that Neisco may or may not be in business, if it doesn't continue to prosper or doesn't change its trend of operations, may be out of business, Mr. Ernest Horvath then came to the Fund, through Mr. Eisenrod, and asked for an assurance that at least three or four years of his employment would be paid, notwithstanding whatever may happen to Neisco.

Neisco is therefore going to enter into a consultant agreement -- now, this is just a possibility that is occurring, because we haven't any idea whether the Horvaths are going to finally sign the documents presented to them, but in the event they do, Neisco would then sign an agreement with Ernest Horvath agreeing to retain him at an annual salary as a consultant at thirty-six thousand dollars a year for the rest of his life. Upon his passing and if his wife, or widow, should survive, then under those circumstances she would be paid an additional eighteen thousand dollars a year for six years.

I might also say that at the time that this matter went into bankruptcy, there were life insurance policies on the lives of Ernest and George Horvath in a face amount of three million dollars. Because of premium delinquencies the fund has made these payments, but has also taken possession and ownership of these policies.

Now, during the course of these many meetings, it has been the desire of the Horvaths to require these policies because of their advanced age, because of the fact that Ernest Horvath is not in good health. There has been no good reason, however, to comply with these suggestions, and therefore, their requests have been rejected.

This particular request, in my judgment, is marginal with respect to what the Trustees should do. I objected to it right from its very inception, but in an effort to break the deadlock, take it out of the bankruptcy court and, have this operation continue, it seems to me that after full consideration and further discussion with Mr. Eisenrod yesterday, that the Trustees would be well advised to acquiesce in this request, and to provide Neisco with an undertaking to the effect that in the event this fails to pay Ernet Horvath thirty-six thousand dollars a year, that the Fund would make up the deficiency and likewise for his widow, providing however that the entire exposure of the Fund will not exceed two hundred thousand dollars, so, in the event that he should survive much beyond the period presently contemplated, that the Fund would not have an open end commitment here.

Now, with respect to Montmartre, Montmartre is seriously in default. They intend coming back to this group with a reconstitution of that situation there. It's been reviewed in the past. If you have any questions, I will be glad to get into that, too, although at this moment I don t think it is required. I think all we are concerned about this morning is to have the Trustees approve the action taken yesterday by the Committee to the effect that if everything else can be put together in proper form and properly documented, that the Fund agreed to make this, or provide this underwriting to Ernest Horvath.

MR. SPICKERMAN: I have a question now tied in with this. You mentioned these insurance policies for three million dollars. Are they tied in with this?

MR. RADOM: No, sir.

MR. SPICKERMAN: They are not tied in. I understood you to say they were.

MR. RADOM: I only made mention of the fact that we do have these insurance policies.

MR. DORFMAN: They run to us. We are the owners of them.

MR. SPICKERMAN: But I understood you to say that he asked us to release it.

MR. RADOM: He did.

MR. SPICKERMAN: And that you thought we ought to release it.

MR. RADOM: No, I didn't make that clear.

CHAIRMAN PRESSER: I understood Joe to say he couldn't find a good reason why we should release them. Mr. Radom - Not at all.

CHAIRMAN PRESSER: Are there any other questions on the part of the Trustees?

The committee recommends approval. What is your pleasure?

. . . The motion was made, seconded and carried that Recommendation Number 12 of the Steering Committee be accepted, with Mr. Madigan not voting. . .

***

FULL BOARD OF TRUSTEES
JUNE 23, 1970

William Presser, Chairman
John A. Murphy
Albert D. Matheson
Champ J. Madigan
Thomas J. Duffey
John Spickerman
William J. Kennedy
Frank E. Fitzsimmons
Roy L. Williams
Odell Smith
Robert Holmes
Donald Peters
Frank H. Ranney
Jack A. Sheetz

Allen Dorfman
Alvin Baron
Joseph Radom
Joseph D. Teitelbaum
David Previant
Francis J. Murtha
Morton J. Harris
Maxwell Kunis

EXHIBIT G TO DEFENDANTS' ANSWERS TO
INTERROGATORIES -- MINUTES OF JULY 31, 1970
MEETING RE: NEISCO, INC.

MR. RADOM: Shall I report as to Neisco-Mammo?

MR. DORFMAN: Yes.

MR. RADOM: This report relates to the various companies in which George Horwath has an interest, -

Neisco, Masmo and Montmartre.

The Trustees from time to time as you recall authorized certain commitments to be made on behalf of the Fund and we attempted through a number of meetings held with Mr. Horwath and his attorneys and accountants to work out a program which would mean in substance the elimination of George Horwath from Neisco-Masmo and he would then have the Montmartre upon which to concentrate.

Our most recent meeting was held last week in New York and as a result, in my judgment, nothing can be accomplished with him. Every time we reached an agreement as to one point he had half a dozen others he is seeking to put into effect.

As a result, it occurs to me we have no choice but to proceed with foreclosure specifying specifically for foreclosure the Montmartre in Miami Beach and secondly with respect to Neisco and Masmo.

We can expect as you may well know a rather bitter fight and great resistance on the part of Horwath but after a lapse of these many months we don't have any choice whatsoever.

I will have a more detailed report for the next Trustees meeting perhaps and we will seek at that time specific authority to proceed with these various foreclosure matters to which I have just alluded.

I might say Neisco has been operating in the Bankruptcy Court out of New York as Debtor in Possession.

This Fund has made monies available to carry on the operations and because of economic conditions prevailing in the textile industry particularly monies have been lost but we do want to preserve that continuity of operation;if we can do so it can be sold - but as far as Montmartre is concerned it seem to me what we have got to do is to seek to have a receiver appointed so the receiver can operate during the time these foreclosure proceedings are pending.

MR. WEISER: The Montmartre occupancy rate is up as of last year.

MR. RANNEY: Do we need any action, Joe?

MR. RADOM: I don't think so at this time. I'll make a specific report next week.

MR. RANNEY: If you need the authority it should be given now.

MR. RADOM: Perhaps we should seek authority at this time to proceed with foreclosure on all three companies - Neisco, Maumo, Montmartre and I would recommend to the Steering Committee that we be given the necessary authority to do whatever is required.

MR. DORFMAN: What is your pleasure?

MR. DUFFEY: With all due respect - but since we have a full Board of Trustees meeting next week Thursday and so there is no question in the court proceedings as to authority to bring the action or what have you, maybe it would be better to wait for Thursday.

MR. RANNEY: This would be a recommendation.

MR. WOLFBERG: This is a recommendation and he will make a report to the Full Board.

MR. DUFFEY: I just don't want any question in the litigation.

MR. DORFMAN: Is there a motion?

... Motion was made, seconded and carried to approve the recommendation . . .

MR. DORFMAN: It is so ordered.

STEERING COMMITTEE
July 31, 1970

Thomas J. Duffey
Champ J. Madigan
Albert D. Matheson
Frank H. Ranney
Donald Peters
Allen Dorfman - Chairman

Nathan Wolfberg
Gladys M. Kibort
Paul Packer
Joseph Radom
Alvin Baron
Francis J. Murtha, Jr.
Morris Weiser
C. P. Chuckray
Francis J. Murtha
Ronald Becker

EXHIBIT H TO DEFENDANTS' ANSWERS TO INTERROGATORIES -- MINUTES OF AUGUST 6, 1970 MEETING RE: NEISCO, INC.

CHAIRMAN RANNEY: Come to order.

MR. MELDMAN: I would like to make a report in the matter of Neisco, Masmo and Montmartre.

Apparently there has been a complete impasse as far as the negotiations are concerned. At any time when negotiation is close or agreement is close, Horwa comes up with increased demands and we therefore ask that the Fund authorize to proceed with foreclosure on all three of the matters.

CHAIRMAN RANNEY: The Steering Committee recommended that we proceed with foreclosure.

MR. MELDMAN: We want to make sure there is a record of the authorization to proceed with foreclosure proceedings.

CHAIRMAN RANNEY: What is your pleasure?

. . . Motion was made, seconded and carried to comply with the recommendation of the Steering Committee in regard to Neisco, Masmo and Montmartre . . .

CHAIRMAN RANNEY: It is so ordered.

FULL BOARD OF TRUSTEES
AUGUST 6, 1970

Frank H. Ranney, Chairman
Frank E. Fitzsimmons
Odell Smith
William Presser
Champ J. Madigan
Albert D. Matheson
John A. Murphy
Thomas J. Duffey
Herman A. Lueking, Jr.
Jack A. Sheetz
William Kennedy

Joseph D. Teitelbaum
Joseph Radom
C. P. Chuckray
Allen Dorfman
Morton J. Harris
Maxwell Kunis
Francis J. Murtha
Leonard Meldman
Alvin Baron
Francis J. Murtha, Jr.
Morris Weiser
George Becker

EXHIBIT I TO DEFENDANTS' ANSWERS TO INTERROGATORIES -- MINUTES OF FEBRUARY 5, 1971 MEETING RE: NEISCO, INC.

. . . Report and resolution as drawn by Mr. Radon . . .

Masmo, Inc. is and has been involved in bankruptcy proceedings pending in the United States District Court in New York City. In November 1963, Masmo borrowed $4,284,000 from the Fund. The balance presently owing on this loan including interest, approximates the amount of the original indebtedness.

All of the Masmo stock is owned by members of the George Horvath family.

Mount Clemens Corporation, the common stock of which is owned to the extent of 72 per cent by Masmo, guaranteed $1,000,000 of the Fund's loan to Masmo. Mount Clemens Corporation has been inactive for some period of time and is devoid of any assets.

Mount Clemens Industries, a wholly owned subsidiary of Mount Clemens Corporation is also dormant and possesses no tangible assets. It does, however, own all of the issue and outstanding shares of stock of Neisco, Inc.

Neisco, Inc. borrowed $1,500,000 in July, 1967, none of which has been repaid.

In July, 1968, Masmo transferred a portion of its machinery and real estate to Neisco subject to the 1963 mortgage possessed by the Fund and further collateralized by the Neisco Security Arrangements.

Mount Clemens Corporation, Montmartre, Inc, 4775 Collins Avenue, and 4815, Inc., borrowed $5,800,000 from the Fund in 1967 secured by the Montmartre properties.

Montmartre, Inc., 4775 Collins Avenue, and 4815, Inc. are affiliates of Masmo and Mount Clemens Corporation.

Neisco filed a petition under Chapter 11 of the Bankruptcy Act approximately 15 months ago in the same District Court in which the Masmo proceedings are pending. The Fund has advanced approxmately $1,500,000 to Neisco, as debtor in possession in Chapter proceedings so as to enable the debtor to carry on its manufacturing operations in North Carolina. To assure proper application of these funds, the assistance of Mr. Sol Eisenrod and his staff were enlisted and during the past year they have supervised the debtor's operations and have countersigned all checks.

Neisco submitted a plan of arrangement which embodies, among other things, the following provisions.

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(a) A 12-1/2 per cent composition settlement with its unsecured creditors -- the amount estimated to be expended for this purpose is $75,000.

(b) Compromise of government tax claims by paying the amount of $455,000 over a period of seven years. The terms of payment require $100,000 on confirmation and annual installments thereafter of $50,000 -- the deferred installments all bearing interest at the rate of 6 per cent per annum. The Internal Revenue Service will not consent to the deferred payment program unless the Fund guarantees $227,500 (50 per cent of the principal) of the amount to be paid by Neisco to the government. In substance, this requires an additional advance by the Fund of $100,000 and should Neisco default after confirmation, the Fund will be required to meet any deficiency to the extent of the balance of the guarantee of $127,500.

This guarantee, if authorized by the Trustees subject to approval by the Internal Revenue Service and the Justice Department.

The Neisco program contemplates a transfer of all of the Neisco stock by Mount Clemens Industries to a new corporation to be organized by Mr. Eisenrod. George Horvath will not participate in the new enterprise, although it is intended that Ernest Horvath will be retained under a lifetime contract at an annual salary of $36,000. This agreement will further provide that in the event Ernest Horvath dies prior to his wife that she will be paid $18,000 for a period of five years thereafter. This agreement is conditioned upon an underwriting by the Fund whereby it will indemnify Ernest and his wife against any loss resulting from Neisco's failure to pay them in accordance with the employment contract, subject to a limitation of $200,000.

In consideration of the Trustee in Bankruptcy of Masmo assigning and conveying all of his right, title and interest into the Masmo to the Fund, it is proposed to pay the Trustee the sum of $25,000 and shall also await the guarantee of Mount Clemens Corporation to the extent of $250,000. When this transaction is consummated it is contemplated that the properties of Masmo would be transferred to Neisco and continue to be subject to the mortgage presently held by the Fund. It is, however, envisioned that the entire indebtedness owing by Masmo and Neisco to the Fund of approximately $7,000,000 will remain subject to the chattel held by the Fund; a repayment schedule will be designed so as to permit the Eisenrod group to retire this debt over a period of 30 years together with interest at the rate to be fixed by the Trustees. Concurrently, with the action to be taken with respect to Neisco and Masmo, it is further contemplated that in lieu of foreclosing upon Montmartre Properties, the Fund will accept deeds and assignments to the Montmartre properties in accordance with the tems which are set forth hereafter in greater detail."

CHAIRMAN PRESSER: What is your pleasure?

.....Motion was made, seconded and carried to accept the resolution of Mr. Radom . . .

CHAIRMAN PRESSER: It is so ordered.

FULL BOARD OF TRUSTEES MEETING
FEBRUARY 4-5, 1971

William Presser, Chairman
Champ J. Madigan
Albert D. Matheson
John Spickerman
Herman A. Lueking, Jr.
Jack A. Sheetz
William Kennedy
Roy L. Williams
Odell Smith
Donald Peters
Joseph Morgan
Frank Ranney
Robert Holmes
Frank E. Fitzsimmons
Thomas J. Duffey

George Jacobsmeyer
Harold Silverberg
Max Kunis
Francis J. Murtha
Allen Dorfman
Leonard Meldman
Nathan Wolfberg
George Becker
Paul Packer
Alvin Baron
Morton J. Harris
David Previant

EXHIBIT J TO DEFENDANTS' ANSWERS TO INTERROGATORIES -- MINUTES OF JUNE 11, 1971 MEETING RE: NEISCO, INC.

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MR. DORFMAN: We skipped over Number 1 in the book - Montmartre, Neisco. Item Number 1, book number 1 which we first reviewed this morning.

Number 1. Montmartre, Neisco.

By reason of the fact that Neisco did not have any operating capital at the inception of the Chapter 11 Bankruptcy proceeding, the Pension Fund made arrangements to advance a sum not to exceed $1,500,000 to Neisco as debtor in possession, pursuant to an order of the Bankruptcy Court having charge of these proceedings. During this interim period, the debtor requires additional funds to carry on its operations. Their business has been increasing, and their receivables are believed to be collectible.

"The debtor has applied to this Fund for additional cash to carry on these operations in the amount of $500,000. It has been suggested that in lieu of having the Fund make any additional funds available that Neisco or the debtor in possession, apply to a bank for its current capital requirements.

"Statement by Mr. Eisenrod that the $1,500,000 that was advanced by the Fund was sufficient for the operation but because of the slow pay of the accounts receivable and the inability of the collection of the accounts, to pay for the payables, there is the necessity or the desire to borrow the $500,000 not as additional working capital but so as to release the frozen accounts receivable.

"Motion was made, seconded and carried that the Pension Fund subordinate the certificate of $1,500,000 to a new certificate to the American National Bank and Trust Co. of Chicago, who proposes to lend up to the sum of a half million dollars on accounts receivable."

MR. HARRIS: In the absence of Joe Radom nd Harvey Siletz, the course of action isn't definitive t the moment with respect to Nelsco and Montmartre and hey suggest that the Trustees adopt the following esolution:

"RESOLVED that all phases of this matter be referred to our legal counsel with instructions to proceed as they deem advisable for the protection of the interest of the Pension Fund including, if necessary, foreclosure action."

CHAIRMAN SHEETZ: What is your pleasure?

. . .Motion made, seconded and carried to adopt the above resolution . . .

CHAIRMAN SHEETZ: It is so ordered.

Chicago

PREPARED FOR MR. SILETS

FULL BOARD OF TRUSTEES MEETING
JUNE 10-11, 1971

Jack A. Sheetz, Chairman
Frank E. Fitzsimmons
Champ J. Madigan
Albert D. Matheson
Thomas J. Duffey
John Spickerman
Herman A. Lueking, Jr.
William Kennedy
Roy L. Williams
Odell Smith
William Presser
Robert Holmes
Donald Peters
Joseph Morgan
Frank H. Ranney

Francis J. Murtha
Allen Dorfman
George Jacobsmeyer
R. C. McCurdy
Harold Silverberg
Max Kunis
Gladys Canino
David Previant
George Becker
Joseph D. Teitelbaum
Nathan Wolfberg
Morton J. Harris
Alvin Baron
Morris Weiser

EXHIBIT K TO DEFENDANTS' ANSWERS TO INTERROGATORIES -- MINUTES OF SEPTEMBER 23, 1971 MEETING RE: NEISCO, INC.

Ace Reporting

MR. RADOM: Perhaps I might start with Neizco.

You may recall that this company is part of a Horvath complex which encompasses Montmartre and Masmo and so forth.

Back in February at the Trustees meeting, the Trustees adopted a resolution - adopted resolutions authorizing us to proceed with the funding of a plan or arrangement which was being submitted at that time in the New York Bankruptcy Court affecting Neizco.

Mr. Eisenrod and his associates, as you may know, have been acting as our caretakers, protecting our

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interests. In the past several months delays have been caused primarily because of the request of Neizco to pay the government tax accruals over a ten year period. More recently the government has finally acquiesced and the payments can be made over this period of time provided the Fund agrees to guarantee payment of those tax obligations to the extent of about $225,000.

The program also envisioned having the Trustees underwrite an employment contract with Ernest Horvath for a period of years - and because of recent decelopments we were instructed to discontinue any further underwriting of this program and plan but in lieu of that to proceed with foreclosure.

During the past two weeks we served Montmartre for example, with notice of taking foreclosure proceedings - and these will be adopted shortly - and we also appeared before the Bankruptcy Court in New York and advised the Judge that the Fund was not going to continue to underwrite this plan.

The publicity respecting this action had a very adverse impact upon the business of Neizco.

Mr. Eisenrod has come to us and said there is no necessity for retaining Ernest Horvath under any circumstances at all. We believe the plan itself though has a great deal of merit. It is his judgment, with which I concur, which is,-our interest would be best served by eliminating Ernest Horvath as far as employment is concerned and proceeding with the balance of the plan.

This is going to entail some advance money by the Fund but there again if the trend continues - and I might say that the business has improved considerably during the past several months - we are then able to do one of two things, - either put it under the umbrella of Mr. Eisenrod's companies or preferably sell it as a going concern, which might produce the higher dollar.

Our primary concern at the moment is to preserve the company and assure the company these mills will continue to operate and will produce the product they are seeking to have.

So, to accomplish this I think we are suggesting here, as I understand it Sol, that we be permitted to proceed with the plan as approved back in February with one exception and that is that we will not under any circumstances guarantee the employment contract that might be negotiated betweein Neizco and Ernest Horvath.

In other words, it is contemplated within the next few days Ernest Horvath will have his employment terminated in any event.

Have I summarized it?

MR. EISENROD: Joe summarized it and the reason that I talked to Joe is purely on a business standpoint. I was not concerned with the characters of the Horvaths. I was concerned with the highest dollar that could be gotten out of the continuation of the business. If this business is liquidated even for two days we would lose a continuity business - lose customers.

The business today has a million dollar backlog. It hasn't had a million dollar backlog for 4 years. The day it was announced that the company might be liquidated 20 to 30 creditors and customers called Rugendorf and requested either payment of their bills or withdrawal or cancellation of their orders. He assured them that this was purely a legal maneuver and he wasn't involved with maneuvers - legal maneuvers, and he was going yo run the plant.

He pacified them and they let their orders stay and the creditors did not press for payment.

This has a loss carry-over, certified by the accountants, of approximately $2,500,000 which is worth about $1,205,000 for any corporation that continues --- and part of the plan would be to preserve and continue; - and preserve this loss carry-over. And I think when you throw against the loss carry-over the $1,205,000 that it would require to put this plan through, against about $100,000 or perhaps a little less to buy it back in liquidation, you are buying this loss-carry over and the business, roughly for $105,000. And, as a business man I tell you that's a good purchase, plus there is continuity of business.

I believe the prime consideration here, whether this business is carried on under its present auspices or sold to somebody, if it is kept intact with the loss carry-over, you will get more money out of it than you would by selling bricks and mortar and second hand equipment.

MR. DUFFEY: Are you sggesting that we proceed with our foreclosure?

MR. EISENROD: No, I am suggesting on the contrary. I thought I made it quite clear, Tom. I say that you should proceed with the plan of arrangement without the Horvaths because there are ways of doing it.

MR. RADOM: You should say "we think".

MR. DUFFEY: That is not the plan they offered to the court.

MR. RADOM: That is right.

MR. DUFFEY: The court approved the plan as we proposed.

MR. EISENROD: Amended.

MR. RADOM: It is still uncertain. And if we have a hearing coming up on October 5th that is one of the reasons we talked about it there.

MR. DUFFEY: What if they withdraw their plan?

MR. RADOM: They don't own the stock. It is owned by one of the upper companies and they cannot withdraw it but they can impede it or sabotage it.

MR. EISENROD: Not the business. You mean the plan.

MR. RADOM: The plan. It may be difficult to accomplish but we are going to try. If we don't succeed in doing it, it means in any event the company will be adjudicated bankrupt and we would be able to reacquire it any way because the Trust would then surrender the collateral to us.

The danger there, it has been pointed out to me by Mr. Eisenrod, is that publicity about an adjudication and the surrender of the collateral to the secured creditors - with the unfavorable publicity. So therefore he feels this is a better program, and I agree with that. But I say again, Tom, that there is some uncertainty attached to it.

See if I can clarify it.

Neizco is a subsidiary of other companies and I might have submitted to you at one time, the entire corporate structure involving 15 or 16 different companies. It is desired here to carve it out. This has nothing to do with Montmartre. Montmartre is still the subject of foreclosure action of one kind or another.

MR. DUFFEY: If Neizco is adjudicated a bankrupt does the government's quarter of a million claim come ahead of us?

MR. RADOM: No. As a matter of fact the claim itself is $500,000 and we are only guaranteeing half of that.

MR. EISENROD: We are guaranteeing $228,000

-the claim is $456,000. But, in my opinion the business will be able to pay for the balance and I think beyond this down-payment for the funds needed, the business has demonstrated its ability to carry on and the only reason for the recent bit of banking was because the local banks would not loan money to a company in reorganization or in bankruptcy.

Ordinarily, with the amount of accounts receivable, which is $900,000 there would be no problem to go to any local bank, once they are discharged for operating on their own steam.

MR. RADOM: I don't want to be misunderstood about this either.

In my judgment this company still has a very uncertain future. Mr. Eisenrod can talk about the tax loss carry-over, but you must generate props to take care of it. The potential is there, we believe, but it has to be demonstrated.

MR. WILLIAMS: Off the record.

. . . Discussion had off the record . . .

CHAIRMAN PRESSER: What is your recommendation? The Trustees have heard the recommendation. What is your pleasure?

MR. MATHESON: I move we approve the recommendation.

MR. RANNEY: Second the motion.

CHAIRMAN PRESSER: You have heard the motion moved and seconded to approve the recommendation. Are you ready for the question?

. . . The motion was put to a vote and carried . . .

CHAIRMAN PRESSER: It is so ordered.

BOARD OF TRUSTEES MEETING
9/23-24/71

TRUSTEES PRESENT

Wm. Presser, Chairman
C.J. Madigan
A.D. Matheson
J. Murphy
Thomas J. Duffey
John Spickerman
Herman Lueking, Jr.
J.A. Sheetz
William Kennedy
Roy Williams
Odell Smith
Robert Holmes
Donald Peters
J.W. Morgan
Frank Ranney

Lueking gave proxy to
Kennedy, left 2:30 p.m.

OTHERS PRESENT

Leonard Meldman
Donald Holmes
A. Dorfman
Francis Murtha
M. Kunis
D. Previant
A. Goldberg
J. Teitelbaum
J. Radom
M. Harris
Becker
Wolfberg
A. Baron
Edward Murtha
George Jacobsmeyer
James Penn
Kent Frisby
Dennis Aldorf
Frank Whiston
Mr. Lyman
Ronald Levin

EXHIBIT L TO DEFENDANTS' ANSWERS TO INTERROGATORIES -- MINUTES OF APRIL 28, 1971 MEETING RE: NEISCO, INC.

MR. RADOM: Neizco, which is indebted to the Fund in the approximate amount of $6,000,000 has been operating under a Chapter 11 procedure in New York City for the past several months. By reason of the fact that Neizco did not have any operating capital at the inception of the Chapter 11 proceeding, this Fund made arrangements to advance a sum not to exceed $1,500,000

Ace Reporting Co.—Chicago

to Neizco as debtor in possession, pursuant to an order of the Bankruptcy Court having charge of these proceedings.

It is anticipated a plan will be formulated and confirmed by the court within the next 45 to 60 days. During the interim period the debtor requires additional funds to carry on its operations.

We are advised that that business has been increasing. The profit trend, or the trend has been reversed so as to disclose some small cash profit as contrasted with a book profit and the receivables that are being generated, from all indications are collectible.

The debtor has applied to this Fund for additional cash to carry on these operations in the amount of $500,000. It has been suggested that in lieu of having the Fund make any additional funds available that Neizco or the debtor in possession, apply to a bank for its current capital requirements. Within the past few days the American National Bank has agreed to make a sum, not to exceed $500,000. available, predicated upon the following:

(a) the issuance of a certificate of

indebtedness by the debtor in possession, in accordance with the court order, and secondly that the certificate would be superior to that of the Fund. In other words, the certificate issued a year and a half ago of $1,500,000 by the debtor in possession, represents a prior claim in the current arrangement proceedings.

Mr. Eisenrod who has been actively in charge of the operations of this company for the past several months is here and he will represent to the Trustees that this action be taken - first to make the funds available because there doesn't seem to be much risk involved and the current business requirements dictate the need for additional monies. Is that right, Mr. Eisenrod?

MR. EISENROD: I will make a statement for the record first that the $1,500,000 that was advanced by the Fund was sufficient for the operation but because of the slow pay of the accounts receivable and the inability of the collection of the accounts, to pay for the payables, there is the necessity or the desire to borrow the $500,000, not as additional working capital but so as to release the frozen accounts receivable.

Now, another statement was made by Mr. Radom that I was in charge of operations. I don't believe Mr. Radom wished to make that statement.

Under the court order the debtor is operating - the only position that I was asked to take ---- and I had Mr. Roggendorf of my office take ---- is that of a co-signator on the checks, to see that the money was not used for purposes of operation of the business. At no time did I have the right or did Mr. Roggendorf have the right, to interfere with the operation of the business.

I might state that at times I have objected to the way the business was operated but as long as the debtor is in possession, the Fund and Ruggendorf and myself are in no position to tell them how to run the business.

That position I wish to make clear here. We are not running the business so to speak. We are watching it until it comes out of the Chapter 11 proceedings.

MR. TEITELBAUM: When you did object they did listen to you?

MR. EISENROD: Yes, they listened.

Off the record.

. . . Discussion had off the record.

CHAIRMAN MATHESON: Do we have a motion? **

. . . Motion was made, seconded and carried that the Pension Fund subordinate the certificate of $1,500,000 to a new certifiacat to the American National Bank & Trust Co. o Chicago, who proposes to lend up to the sum of a half million dollars on accounts receivable . . .

CHAIRMAN MATHESON: It is so ordered.

attendance

ADMINISTRATIVE LOAN COMMITTEE
APRIL 28, 1971

Albert D. Matheson, Chairman
Champ J. Madigan
Thomas J. Duffey
Frank H. Ranney
Donald Peters
Allen Dorfman
Joe Radom
Joseph D. Teitelbaum
Alvin Baron
Nathan Wolfberg
Leonard Meldman
C. P. Chuckray
Morton J. Harris
George Becker

EXHIBIT M TO DEFENDANTS' ANSWERS TO INTERROGATORIES -- LETTER DATED FEBRUARY 18, 1970 FROM JOSEPH S. RADOM TO FREDERICK E.M. BALLON RE: NEISCO, INC.

LAW OFFICES OF
JOSEPH S. RADOM
1043 FIRST NATIONAL BUILDING
DETROIT, MICHIGAN 48226
313 963-7187

February 18, 1970

Frederick E. M. Ballon, Attorney
Ballon, Stoll & Shyman
1450 Broadway
New York, New York 10018

Re: Neisco, Inc.
Re: Montmartre, Inc.
Re: Masmo

Dear Fred:

Mr. Albert Matheson has authorized the person who countersigns check on the Montmartre account to pay all the notes (in the aggregate amount of $25,000) held by Wasserman & Tatem. Therefore, as and when sufficient funds become available from the operations of the Hotel, periodic payments will be made. Similar authority has been given to pay the notes held by Messrs. Snary and Dufour providing, however, that full details are submitted to us respecting the advances made by the payees of these notes.

I am in accord with your observation that the premiums previously paid by the Pension Fund on the policies insuring the lives of Messrs. Horvath should not be charged to Neisco. Mr. Rugendorf has been notified accordingly and doubtless he will attend to the necessary adjustment immediately. In the meantime, I note from Irwin's letter of February 11th that he has not received the forms of assignment from the Horvaths, and I would suggest that they comply with his request without delay. If there is any reason as to why they are withholding these assignments, please advise me by phone.

I know of no means by which the Pension Fund can sanction payment of fees to your offices, as suggested in your February 3rd letter.

The firm of Bradley,Gebhardt,DeLaney and Millette, of Charlotte, N.C., has been retained to represent the Pension Fund Trustees to initiate foreclosure proceedings of the Masmo real and personal property covered by the mortgages and security interests held by the Pension Fund Trustees. Mr. Bradley of the Carolina firm is preparing the requisite notices and other documents relating to the adoption of the foreclosure action, and as soon as these are received we can attempt to establish a time table as to the filing of the other petitions.

I shall be in your offices on the morning of February 24th for the purpose of meeting with Ron Itzler so as to complete preparation for the hearing scheduled later that morning.

Cordially,

JOSEPH S. RADOM

jsr/wbs
cc: Mr. Teitlebaum

EXHIBIT N TO DEFENDANTS' ANSWERS TO INTERROGATORIES -- LETTER DATED MARCH 30, 1970 FROM BALLON TO SOL EISENROD, ESQ. RE: HORVATH

Ballon, Stoll & Shyman
1450 Broadway
New York, N.Y. 10018

FREDERICK E. M. BALLON
SEYMOUR J. SHYMAN
ARTHUR L. STOLL
RONALD S. ITZLER
[illegible] KOMISSAROFF
ALBERT M. KAUFMAN
KENNETH S. KNIGIN
[illegible] BRANDON
DAVID NADLER
EUGENE H. SHIRIN
MILTON T. PRAGER
LEONARD LOTH
[illegible] MAUER

ATTORNEYS
AND
COUNSELLORS
AT LAW

LONGACRE 3-7070

CABLE [illegible]

7:25 AM
#334 Joe

Rtn Monday
440
#309

March 30, 1970

Sol Eisenrod, Esq.
420 Madison Avenue
New York, New York

Re: Horvath

Dear Mr. Eisenrod:

Pursuant to talks had between you and Mr. George A. Horvath, the following proposal is made as a possible vehicle to be used to dispose of all existing problems. Of course, this letter is written without prejudice; and is not to be used by any of the parties in any manner whatsoever, or for any purpose whatsoever, unless the same is consummated.

It is proposed that the following procedure be followed:

1. In the pending Neisco Chapter XI proceeding, a Plan of Arrangement should be promulgated whereunder general creditors would be paid 10% in cash, in full discharge of their claims. Under IRS requirements, the minimum amount which it will accept, as a down payment, would be that sum which equals the entire total paid to general creditors. It is our belief that arrangements could be made to make payment of the balance due to IRS over a period of possibly four years. To consummate such a Plan of Arrangement would require an investment by the Pension Fund of some $200,000.00 to $250,000.00, including all payments, excepting only the deferred payments to IRS.

2. George A. Horvath and Ernest V. Horvath, would execute general releases, transferring all of their right, title and interest in and to any of the properties involved, and execute all necessary estoppel certificates a

BEST COPY AVAILABLE

affidavits in consideration for the items hereinafter enumerated.

3. The Fund would arrange to obtain ownership of the realty building and machinery constituting "Belmont Mills", and transfer same free and clear of all encumbrances to a designee of Ernest V. Horvath.

The Fund would arrange to obtain ownership of the realty building and machinery constituting "Mayo Mills", and transfer same free and clear of all encumbrances to a designee of George A. Horvath.

The Fund would arrange to obtain ownership of the realty building and machinery constituting "Michael Mills", and transfer same free and clear of all encumbrances to a designee of George A. Horvath.

At the present time, both Belmont Mills and Michael Mills, are not being operated by Neisco. Both of said mills are leased to third parties; the rental received from the Belmont Mills is $30,000.00 per year and from Michael Mills, $12,000.00 per year. Of course, the property would be transferred, subjec to such leases. The Mayo Mills has been shut down and is inoperative. Both the Belmont and Michael Mills have been shut down and inoperative until the aforementioned leases were consummated, which was during this past year. There would be no transfer of inventory involved.

4. The Fund would rewrite and reconstitute the mortgage or mortgages presently on the properties constituting the Montmartre complex, so as to provide for them to have a twenty-five year life from the present time. There would be a moratorium of any payments under the mortgage for a period of three years; but same would be conditioned upon the payment of ground rents and taxes. The interest rate shall be reduced to six (6%) percent per annum. - 7%

5% [illegible]

509-759

The Fund would agree that it will subordinate the mortgage and the indebtedness secured thereby to any construction loan which might be obtained for a new structure, or an additional structure to be built upon the premises in question, and which would necessarily include demolishment of the hotel, if same is contemplated within the Plans.

Ground Rent + Taxes — 110,000

Wk. 4

The Fund will further agree to advance the funds necessary to purchase the underlying fees provided that a person or group of persons, of financial responsibility, interested themselves in the construction aforementioned (it being understood that George A. Horvath, may be a party of interest in said group).

Further, with reference to the Montmartre situation. During the "interim period", the Fund could countersign checks; but not interfere with the management and operation of the hotel. Of course, George A. Horvath would be paid a reasonable salary.

5. The Fund will hold George A. Horvath and Ernest V. Horvath harmless from any liability for withholding taxes in connection with the operations of Neisco and Masmo.

6. It is intended that a voluntary petition in bankruptcy be filed for Masmo. The Fund will agree to use its best efforts to acquire ownership of the corporation known as Craftspun, which holds title to the Montmartre stock, (which, in turn, holds title to the various corporations constituting the Montmartre complex) and transfer the same to George A. Horvath,.at the cost thereof, if any.

There is no intention herewith to formulate the mechanical details which would be involved in the execution of the foregoing arrangements. I am confident that counsel can readily agree thereon. This is to confirm the fact that an appointment has been scheduled at the offices of the undersigned at 9:00 A. M. on April 6, 1970. In the meantime, it is our intention to proceed to negotiation with the Creditors' Committee, so as to be in a position to properly address the Court on the adjourned date, (April 9, 1970) and hopefully, to present to the Court a Plan of Arrangement, which has been agreed to by the Creditors" Committee, and for which financing is available.

Cordially,

Frederick E. M. Ballon

FEMB/bz

cc: Joseph Radom, Esq.

EXHIBIT O TO DEFENDANTS' ANSWERS TO INTERROGATORIES -- LETTER DATED APRIL 8, 1970 FROM BALLON TO RADOM RE: HORVATH

Ballon, Stoll & Shyman
1450 Broadway
New York, N.Y. 10018

FREDERICK E. M. BALLON
SEYMOUR J. SHYMAN
ARTHUR L. STOLL
RONALD S. ITZLER
JULIUS KOMISSAROFF
ALBERT M. KAUFMAN
KENNETH S. KNIGIN
MILTON BRANDON
DAVID NADLER
EUGENE H. SHIFRIN
MILTON T. PRAGER
BERNARD LOTH
PAUL MAUER

ATTORNEYS AND COUNSELLORS AT LAW
LONGACRE 3-7020
CABLE: BALFRED

April 8, 1970

Joseph I. Radom, Esq.
1800 First National Building
Detroit, Michigan 48226

Re: Horvath

Dear Joe:

Since the counter-proposals at the meeting in our offices were not completely satisfactory to Messrs. Horvath, pursuant to the suggestion of Mr. Eisenrod, I am incorporating herewith a proposal which I truly think should be satisfactory to all parties involved.

Again, this letter is written entirely without prejudice; and is not to be used by any of the parties in any manner whatsoever, or for any purpose whatsoever, unless the same is consummated.

It is proposed that the following procedure be followed:

1. In the pending Neisco Chapter XI Proceeding, a Plan of Arrangement should be promulgated whereunder general creditors would be paid % in cash in full discharge of their claims. Under usual IRS requirements, the minimum amount which it will accept, as a down payment, would be that sum which equals the entire total paid to general creditors. It is our belief that arrangements could be made to make payments of the balance due to IRS over a period of possibly four years. In addition to creditors and the down payment to IRS, administration expenses would have to be paid. The funds necessary to consummate the Plan are to be advanced by the Pension Fund.

25
25
20

Neisco shall be caused to repay to Montmartre, the sum of approximately $85,000.00, which was advanced to it during the past year for legal and accounting fees.

Neisco shall be caused to make arrangements with Jonallen to release to the Horvaths, the stock in Nederlands Mines, which Jonallen presently holds as collateral security.

2. The Horvaths would execute general releases, transferring all of their right, title and interest in and to all of the Neisco properties, and execute all necessary estoppel certificates and affidavits in consideration of theitems hereinafter enumerated.

3. The Fund would enter into an agreement whereby it would employ Ernest as a "consultant" in its textile operations, the term of which agreement would be for his lifetime and the salary to be paid to him would be $52,000.00 per annum, payable in equal weekly installments.

4. The Fund would rewrite and reconstitute the mortgage or mortgages presently on the properties constituting the Montmartre complex, so as to provide for them to have a twenty-five year life from the present time. There would be a moratorium of any payments under the mortgage for a period of three years; but same would be conditioned upon the payment of groundrents and taxes. The interest rate shall be continued at 7% per annum. However, arrearages of interest shall bear no interest, but shall become payable at the end of the term. It is suggested that the ground rents and taxes can be paid to the Fund in monthly installments, (with a 30 day grace period) so as to avoid thepossibility of any default.

The Fund will not unreasonably withhold its consent to execute a subordination of the mortgage and the indebtedness secured thereby to any construction loan which might be obtained for a new structure, or an additional structure to be built upon the premises in question and which would necessarily include demolishment of the hotel if same is contemplated within the Plans. The reasonableness of the Fund's consent to subordination shall be judged solely by the fact that a person or group of persons of financial responsibility have interested themselves in the construction aforementioned, (it being understood that George A. Horvath may be a party of interest in said group).

The Fund will advance the funds necessary to purchase a five-eighths (5/8) interest in one of the two fee interests which cover the ground of the premises adjoining the hotel proper.

During the "interim period", the Fund may counter-sign checks; but not interfere with the management and operation of the hotel. All communications by the Fund, or its designees, should be through George A. Horvath, in order to avoid any breakdown in the maintenance of discipline and orderliness in the operation of the hotel.

(a) Montmartre shall maintain a New York office. The expenses of such office during the first eighteen (18) months, for rent and personnel, shall not be in excess of $45,000.00 per annum; and thereafter, at the rate of $30,000.00 per annum.

(b) Montmartre shall be released from the lease on the premises it presently occupies; but shall surrender its interest in the $20,000.00 deposit which it has heretofore made.

(c) George A. Horvath shall be employed by Montmartre as a "consultant", under a lifetime contract, at a salary of $52,000.00 per annum, plus expenses.

5. The Horvaths will attempt to compromise their derivative liability for taxes due to IRS from Masmo, Inc. The Fund will reimburse the Horvaths for any monies necessary in connection with such settlement in the approximate sum of $50,000.00 to $75,000.00.

6. George A. Horvath has indicated his intention to attempt to acquire ownership of the corporation known as, Craftspun, which holds title to the Montmartre stock, and/or the Montmartre stock itself, together with its subsidiary corporations, all constituting the Montmartre complex. The

Fund has agreed that it will not, directly nor indirectly, attempt to bid against Mr. Horvath, nor impede nor frustrate his attempts to secure such ownership.

7. The Fund shall turn back to the Horvaths, the life insurance policies it presently holds on their lives.

As previously stated, I am confident that the mechanical details which will be involved in the execution of the foregoing arrangements can be readily agreed to between ourselves.

May I hear from you at your earliest convenience since time is rapidly becoming of the essence.

Cordially,

Frederick E. M. Ballon

FEMB/bz

cc: Sol Eisenrod, Esq.
420 Lexington Avenue
New York, New York

Irving Rugendorf, Esq.
420 Lexington Avenue
New York, New York

Mr. George A. Horvath
545 Madison Avenue
New York, New York

535
2992

83

EXHIBIT P TO DEFENDANTS' ANSWERS TO INTERROGATORIES -- LETTER DATED APRIL 21, 1970 FROM BALLON TO RADOM RE: HORVATH

Ballon, Stoll ~~& Shiman~~
1450 Broadway
New York, N. Y. 10018

FREDERICK E. M. BALLON
~~SEYMOUR L. SHIMAN~~
ARTHUR L. STOLL
RONALD S. ITZLER
JULIUS KOMISSAROFF
ALBERT M. KAUFMAN
KENNETH S. KNIGIN
MILTON BRANDON
DAVID NADLER
EUGENE H. SHIFRIN
MILTON T. PRAGER
BERNARD LOTH
PAUL MAUER

ATTORNEYS
AND
COUNSELLORS
AT LAW

LONGACRE 3-7020

CABLE: BALFRED

April 21, 1970

Joseph I. Radom, Esq.
1800 First National Bldg.
Detroit, Michigan 48226

Re: Horvath

Dear Joe:

Following up our meeting yesterday, I am taking the liberty of addressing you herewith to confirm the various points to which we agreed.

I have made two changes with reference to two of the items discussed. In view of the circumstances, same should be completely agreeable.

If the items hereinafter recited are satisfactory, it is my suggestion that we arrange to incorporate them in an agreement, so that we may govern all future actions in accordance therewith and without any future problems arising between the parties.

As usual, this letter is written entirely without prejudice and shall not be used by the parties against each other or for any purpose whatsoever, unless the same is consummated.

Seriatim, I recite the various points as follows:

1. The Fund will furnish funds necessary to consummate the plan of arrangement in the Neisco Chapter XI proceedings (12-1/2% in cash to general unsecured creditors). I have made an offer to the attorneys for Viscose to purchase its claim for 15%, all cash, and am awaiting their reply. If the answer is affirmative, the Fund will arrange for the claim to be purchased. If the reply is negative, you will advise me whether you desire the plan to be amended.

2. The sum of $85,000 heretofore advanced by Montmartre to and for Neisco shall be repaid.

3. Jonallen shall be caused to release to the Horvaths, the stock in Nederlands Mines.

4. The Fund will enter into a "consultant" employment agreement with Ernest for his lifetime, at a salary of $36,000 per annum, payable semi-monthly. (The first of the modifications to our discussions is that Ernest's previous salary at Neisco, viz., $1,000 per week, is to be continued until the end of the year. This is an absolute prerequisite in order for his family to be enabled to make an adjustment to a reduced scale of living.)

5. The Fund will arrange for monies to be made available, to a maximum of $75,000, as the same may be necessary to effectuate a disposition of the claim, if any, of the IRS against the Horvaths for taxes due from Masmo.

6. The security deposit of approximately $20,000 heretofore made by Montmartre to the landlord, in connection with the lease of the premises in New York City presently used by Neisco, shall be repaid to Montmartre. Montmartre shall be released from any liability on said lease, or indemnified and held harmless against liability thereunder. May I direct your attention to the necessity of making payment of vacation and severance pay to employees in the New York office of Neisco in the event of termination of their employments.

7. Life insurance policies, each in the sum of $250,000, on the respective lives of the Horvaths (of those heretofore acquired by the Fund), shall be transferred to the Horvaths.

8. The Fund will advance the funds necessary to purchase a 5/8ths interest in one of the two fee interests of the ground adjoining the Montmartre Hotel.

9. With reference to Montmartre:

(a) The Fund will reconstitute the mortgages on the Montmartre complex, making them 25 year life mortgages from the present time, interest at 7% per annum, with a moratorium on payments to the Fund for a period of three years, and with present arrearages of interest being payable at the end of the term, with no interest thereon.

(b) The Fund will not unreasonably withhold its consent to the execution of a subordination of the mortgage as heretofore discussed.

(c) During the interim period, the Fund shall not countersign checks; shall not interfere with the management and operation of the Hotel; and shall make all communications concerning the Hotel solely through George A. Horvath. (This is the second modification of our conversation. This has become an absolute prerequisite by virtue of the hap-hazard and irresponsible failures constantly on the part of the countersignator to countersign checks presented to him. I just learned today thatthe countersignator has declined to countersign a check for Wasserman & Taten, which he has had in his possession for over a week - despite the fact that this has been authorized time and again and despite the fact that the funds are available in the bank to make payment thereof.)

(d) The ground rents and taxes are to be paid, in escrow, to the Fund, in monthly installments (with a thirty day grace period). Upon any such default, the Fund shall be entitled forthwith to countersign all future checks.

(e) Since there will be no countersignature necessary, it is no longer meaningful for the agreement to make any provision with reference to the salary to be paid to Mr. George A. Horvath , or the amount to be disbursed by Montmartre for the maintenance of an office in New York City. Obviously, the disbursements to be made for these items will be governed and limited by the actual availability of funds in the Montmartre treasury.

(f) The Fund will not bid against Mr. George A. Horvath in his attempt to acquire an interest in Kraftspun and various Montmartre shares of stock.

May I hear from you at your earliest convenience?

Cordially,

Frederick E. M. Ballon

FEMB/s

cc:

Sol Eisenrod, Esq.

EXHIBIT Q TO DEFENDANTS' ANSWERS TO INTERROGATORIES -- LETTER DATED APRIL 27, 1970 FROM RADOM TO ALBERT D. MATHESON

April 27, 1970

Albert D. Matheson, Attorney
Matheson, Dixon & Bieneman
Suite 1700, One Woodward Ave.
Detroit 26, Michigan

Dear Albert

Enclosed herewith is the latest in a series of letters received from counsel for the Horvaths. Copies of the prior letters were transmitted to your offices.

Each of the letters was prepared subsequent to meetings held in New York City, at which Messrs. Rugendorf and Eisenrod were in attendance, as well as the writer; and the letter of April 8th followed a meeting at which you were present.

Mr. Ballon invariably commences his letters with the caveat that the proposals "are submitted without prejudice." The tenor of his letters suggest that there has been a meeting of the minds on some of the issues involved; although we have made it abundantly clear that in the final analysis the Trustees will make a decision after we have marshaled the facts and submitted our recommendations.

It has been evident for some time that any final disposition of the projects in which the Horvaths are interested required an overall solution since, in our opinion, it was not possible to achieve a satisfactory result on a piecemeal basis.

The options or alternatives available to the Trustees as to Neisco remain unchanged. At the inception of the Chapter XI proceedings in November of last year, it was the consensus of opinion amongst the Trustees that an infusion of operating funds was warranted so as to preserve the values of this business as a going concern: otherwise, a tremendous sacrifice in values would occur through the suspension of operations and the consequences which flow from selling equipment at distress prices. During the interim, the textile industry, in general, has had a very bleak first-quarter, and the operating results of Neisco reflect this condition. Mr. Rugendorf, who has been supervising this matter on behalf of the Pension Fund Trustees, is definitely of the opinion that this trend can be reversed under normal market conditions, and reports that the equipment is operating satisfactorily and that there is an adequate pool of skilled help in the area of the mills. He has been highly critical of the excess costs incurred in continuing to carry the New York Office, and recommended that it be closed. His comments prompted the meetings which were held in Mr. Ballon's offices and on which occasions various plans and procedures were discussed at length.

Mr. Eisenrod, with whom Mr. Rugendorf is associated and who apparently has had considerable experience in the textile field, has evinced an interest in acquiring all of the Neisco stock, which would be operated as a subsidiary of one of his publicly held companies. This plan envisions, as noted by Mr. Ballon's letters, effecting a 12½% composition settlement with the unsecured creditors whose claims aggregate $500,000. The other liabilities, exclusive of the secured claims held by the Fund against Neisco, involve taxes totaling $500,000. Mr. Ballon was of the belief that the Government would entertain a proposal to pay these taxes over a ten-year period. Administration costs have also been incurred of an undetermined amount. If the projections of future operations of Neisco appear favorable after further study, the Pension Fund Trustees would be called upon to advance an additional $175,000 to pay 12½% to unsecured creditors, the initial instalment on the tax claims as well as paying the costs of administration. These advances would thereupon be added to other claims held by the Fund and secured by all of the properties of Neisco.

It is the considered opinion of Messrs. Eisenrod and Rugendorf that there is a need for facilities such as Neisco in the textile industry and that the withdrawal of George Horvath from management, together with the closing down of the New York Office, would effect a savings of $150,000 per year. I reiterate, that we have made no commitment of any kind on behalf of the Trustees, and the final decision will be made by the Trustees after a thorough review of all factors, and predicated of course upon Mr. Eisenrod's ability to satisfy the Trustees as to whether there is a reasonable expectation that the Fund will ultimately receive payment in full together with interest.

During the course of our discussions, Mr. Ballon suggested that Ernest Horvath be employed as a consultant by Neisco for the remaining years of his life at a salary of $52,000 per year. In our judgment, $36,000 represents the maximum which should be paid to him. At this time, both he and George are drawing $1,000 each per week in accordance with the Order of the Court.

The rationale of repaying $35,000 to Montmartre and reimbursing Montmartre $20,000 for the security deposit previously made, which appear in items #2 and #6 of the April 21st letter of Mr. Ballon, escapes my comprehension.

Item #3 of the April 21st letter is a new matter about which I have absolutely no knowledge.

The Life Insurance Policies, which aggregate $3,000,000, on the lives of the Horvaths were assigned by Masmo to the Fund upon the payment of approximately $17,000 in delinquent premiums. There is absolutely no basis or justification for the Trustees to give any of these policies to the Horvaths, as suggested in Paragraph 7 of Mr. Ballon's April 21st letter.

Masmo recently filed a Voluntary Petition in Bankruptcy. The Fund holds mortgages and security interests upon its properties, all of which, we understand, are leased to Neisco. We are advised that the withholding taxes of Masmo exceed $700,000 plus penalties and interest; and, notwithstanding the recent bankruptcy proceedings undertaken recently by George and Ernest Horvath, these taxes are assessable against them as the responsible officers and are not dischargeable in bankruptcy. By reason of their impoverished condition, it has been suggested that an effort be made to settle these outstanding taxes at a level of $50,000 or in a sum not in excess of $75,000. Again, assuming all other factors to be as represented, the Trustees of the Fund might be justified in advancing an amount not to exceed $75,000 to Masmo to satisfy these tax claims and thereby expedite the foreclosure proceedings which must be adopted on behalf of the Fund so as to obtain title to the collateral upon which the Fund holds liens.

The balance of Mr. Ballon's letter of April 21st alludes to Montmartre. As we have previously observed, the Fund should abstain from taking any acquisition adjacent to Montmartre until a definitive agreement is reached with the Horvaths as to all matters in controversy. In his previous correspondence Mr. Ballon suggested the maintenance of a New York Office, the need of which is highly questionable and clearly the proposed costs are excessive. The hotel has failed to keep current as to escrow arrangements devised on Nov.11, and its immediate prospects are not favorable. Miami Beach hotels as you are well aware, had a disastrous season, and unless substantial sums are expended to refurbish and rehabilitate the Montmartre, it is likely to continue to deteriorate. In any event, if any consideration is to be given to the reconstitution of the mortgages, it would also be necessary for the Fund to assure itself that the Montmartre had a reasonable chance of surviving during the next two years pending further efforts on the part of Horvath and his associates to syndicate a condominium complex. During this interim period, whether any additional funds are made available, there must be adequate controls imposed upon Horvath's operations, and specifically, the disbursement of all funds, by an agent of the Fund countersigning all checks drawn on the hotel bank account.

Therefore, to summarize: the amended proposals detailed in Mr. Ballon's letter of April 21st do not warrant favorable consideration by the Trustees;,although we do believe that a further session should be scheduled to explore all facets exhaustively.

Yours very truly,

JOSEPH S. RADOM

jsr/wbs

DEFENDANTS' SUPPLEMENTAL INTERROGATORIES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---x

BALLON, STOLL & ITZLER,

Plaintiff,

72 Civ. 2916

- against -

SUPPLEMENTAL INTERROGATORIES

THOMAS J. DUFFEY, HERMAN A. LEUKING, JR., ALBERT D. MATHESON, WILLIAM J. KENNEDY, JOHN A. MURPHY, JACK A. SHEETZ, JOHN SPICKERMAN, FRANK E. FITZSIMMONS, ROBERT HOLMES, DONALD PETERS, WILLIAM PRESSLER, ODELL SMITH, ROY L. WILLIAMS, FRANK H. RANNEY, and JOSEPH MORGAN, Not individually but as Trustees Under a Common Law Trust of the Central States Southeast and Southwest Areas Pension Fund,

Defendants.

---x

TO: BALLON, STOLL & ITZLER, a Partnership

PLEASE TAKE NOTICE, that pursuant to Rule 33 of the Federal Rules of Civil Procedure, you, or an officer or agent of you, are required to answer in writing and under oath each of the following Interrogatories, and to serve a copy of each answer upon the undersigned attorneys for defendants within thirty days after service thereof.

DEFINITIONS

A. As used herein, the term "document" means the original and any copy, regardless of origin or location, of any book, pamphlet, periodical, letter, memorandum, telegram, report, record, study, handwritten note, working paper, chart, paper, graph, index, tape, date sheet or data processing card, or any other written, recorded, transcripted, punched, tapes, filmed, or graphic matter, however produced or reproduced, to which you have or have had access.

B. The term "communication" means discussions, conversations, correspondence, telephone calls, any oral utterance or written message in any form whatever.

C. The term "Identity", "Identify" or "Identification" when used with reference to an individual person, means to state his full name and present position and business affiliation, and business and home address, if known, and each prior position and business affiliation.

The term "Identity", "Identify" or "Identification" when used with reference to a document, means to state the date and author (and, if different, the signer or signers), the addressee, type of document (e.g., letter, memorandum, chart) and its present or last known location or custodian. If any such document was, but is no longer, in your possession or subject to your control, state the disposition which was made of it, the reason for such disposition and the date hereof.

The term "Identity", Identify" or "Identification" when used with reference to a communication, means to identify the persons present or involved in each such oral communication and the date such occurred, the subject matter and substance and nature of each such communication, the identity of your source of information and the date you received such for any such communication you were not a party to or present at, and the identity and description of all documents relating to or concerning, in whole or in part, all such communications.

1. With respect to the services claimed to have been rendered during the period between October 31, 1969 and March 22, 1972, for which compensation is sought in this action, state the following:

A. State whether any record exists of the rendition of such services other than the documents which have been marked as exhibits upon the deposition of Ronald S. Itzler in this action, as defendant's Exhibit "A" for identification, defendant's Exhibit "H" for identification, and defendant's Exhibit "I" and its various sub-numbers for identification. If so, annex copies of such records.

B. Did plaintiffs perform any services for which compensation is sought in this action, other than those reflected and recorded in the exhibits marked as defendant's Exhibit "A" for identification, defendant's Exhibit "H" for identification, and defendant's Exhibit "I" for identification. If so, state in respect of such services not so recorded, the following specific information as to each item of service:

(i) The identity of the person who on behalf of plaintiff performed the services.

(ii) The nature of the services performed.

(iii) The amount of time spent on performing each item of service.

2. State whether the evaluation of the services for which recovery is sought in this action is based upon an hourly rate and if so, state in respect of each person who rendered such services:

A. The hourly rate charged or entering into the computation of value.

B. The basis for establishing such hourly rate in respect of such individual.

C. The overall charges for overhead expense and otherwise current at the time of the services rendered which were used as a basis for computing such hourly rate, and the computations upon which the hourly rates were computed, including the total number of hours of services attributed to each individual per year in the computation of such hourly rate.

3. Was any written communication exchanged between plaintiffs and Neisco, Inc., or any of its officers, particularly George Horvath or Ernest Horvath, retaining or instructing plaintiffs in respect of representing Neisco, Inc. in the Chapter XI reorganization proceedings, or pertaining to the fees to be paid to plaintifs in respect of such representation? If so, identify and attach copies of all such writings or documents.

Dated: February 14th , 1975

SCHAEFFER, DALE & VOGEL
Attorneys for Defendants

By: /s/ Laurence Vogel
A Member of the Firm
410 Park Avenue
New York, N.Y. 10022

PLAINTIFF'S RESPONSE TO SUPPLEMENTAL INTERROGATORIES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---X

BALLON, STOLL & ITZLER,

Plaintiff,

-against-

72 Civ. 2916

THOMAS J. DUFFEY, HERMAN A. LEUKING, JR., ALBERT D. MATHESON, WILLIAM J. KENNEDY, JOHN A. MURPHY, JACK A. SHEETZ, JOHN SPICKERMAN, FRANK E. FITZSIMMONS, ROBERT HOLMES, DONALD PETERS, WILLIAM PRESSLER, ODELL SMITH, ROY L. WILLIAMS, FRANK H. RANNEY and JOSEPH MORGAN, not individually but as Trustees under a Common Law Trust of the Central States Southeast and Southwest Areas Pension Fund,

RESPONSE TO SUPPLEMENTAL INTERROGATORIES

Defendants.

---X

1. A. Further records exist relative to the rendition of services by the plaintiff to the defendants other than the documents which have been marked as exhibits upon the deposition of RONALD S. ITZLER in this action as defendants' Exhibits "A" and "H" for identification, and defendants' Exhibit "I" and its various subnumbers for identification. Copies thereof are voluminous and comprise several file folders. They consist of legal documents, correspondence and evidentiary material in connection with the Proceedings for an Arrangement of Neisco, Inc. Said documents are of such a voluminous nature that it is impractical and would be prohibitively expensive and time consuming to reproduce the same as exhibits for defendants' counsel. The same are on file at the offices of the plaintiff and may be examined by defendants' counsel and its agents during normal business hours upon due notice there-

for having been given by defendants' counsel to plaintiff's counsel; a number of them may also be examined in the United States District Court, Southern District of New York, where they are official records.

(i) Ronald S. Itzler, Frederick E. M. Ballon, Burton D. Strumpf, Arthur L. Stoll.

(ii) Services were performed and designed to effectuate the promulgation of a Plan in the Proceedings for an Arrangement of Neisco, Inc., filed and then pending in the United States District Court for the Southern District of New York.

(iii) No detailed record of additional time spent is available.

2. Time expended was but one of the criteria in evaluating services.

A. and B. Frederick E. M. Ballon - $150 per hour - Senior Partner; Ronald S. Itzler - $150 per hour - Senior Partner; Arthur L. Stoll - $150 per hour - Senior Partner; Burton D. Strumpf - $100 per hour - Junior Partner.

C. Not applicable.

3. Our records do not presently disclose any.

Dated: New York, New York
September 24, 1975

BALLON, STOLL & ITZLER
Attorneys Pro Se

By: Ronald S. Itzler
Ronald S. Itzler
Office & P. O. Address
1180 Avenue of the Americas
New York, New York 10036
575-7900

TRANSCRIPT OF RECORD OF PROCEEDINGS
HELD ON SEPTEMBER 22, 23, 27, 28, 1976

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

--------------------------------x

BALLON, STOLL & ITZLER,

Plaintiffs,

vs.

THOMAS J. DUFFEY, et al

Defendants.

--------------------------------x

Before:
HON. CHARLES S. HAIGHT, JR.
District Judge.

72 C 2916

New York, September 22,23,27,28, 1976

STENOGRAPHER'S MINUTES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---------------------------------------x

BALLON, STOLL & ITZLER, :
Plaintiffs, :
vs. : 72 C 2916
THOMAS J. DUFFEY, et al., :
Defendants. :

---------------------------------------x

Before:

HON. CHARLES S. HAIGHT, JR., ESQ.,
District Judge.

September 22,1976
10:00 a.m.

APPEARANCES:

KENNETH S. KNIGIN, ESQ.,
Attorney for plaintiffs

GREENBAUM, WOLFF & ERNST, ESQS.,
Attorneys for defendants
BY: LAURENCE VOGEL, ESQ., of counsel.

and

SYDNEY J. SCHWARTZ, ESQ.,

THE CLERK: Ballon, Stoll & Itzler vs. Thomas J. Duffey, et al.

Plaintiff ready?

MR. KNIGIN: Plaintiff ready.

THE CLERK: Defendant ready?

MR. VOGEL: Defendant ready.

THE CLERK: All sides ready, your Honor.

THE COURT: I have read the material that's been submitted to me, but it might be helpful to just have short opening statements.

Mr. Knigin, just give me a brief statement of what you expect the evidence to show on behalf of the plaintiff. Then I will ask for a comparable statement from the defendants.

MR. KNIGIN: Fine, your Honor.

The basic problem with this case is simply that the defendant in this action, it was a pension fund for the Teamsters Union, is apparently a substantial lender of money to business enterprises and one of those business enterprises, a firm known as Neisco, Inc., Neisco had been a broker of money for many years from the fund and apparently there came a time when Neisco and a number of Neisco sister companies, which were also borrowers from the fund were in serious financial difficulty. Apparently the principal of Neisco, Mr. Horvath, went to the fund and said, "Look, I need more money,"and the fund was faced with the question, or the conclusion of whether or not they should put up more money or whether they should foreclose on their secured interest on the loan that they had given, and they came to the conclusion that they would like to put up more money, for whatever purposes it served them, and our evidence will show a very self serving purpose.

But they decided the only way they would put up the money was if a Chapter XI proceeding was instituted on behalf of Neisco, because in the protection of the Chapter XI proceeding, the funds that they were putting in would be entitled to a high priority under a certificate of indebtedness.

They put up a million six hundred thousand. Of course the debtor needed somebody to file a Chapter XI for him. The fund was not attorneys.

So the fund said you bring your attorney and we will have a talk with him. In fact, many conversations went on between the fund and Neisco's attorney. Neisco's attorney being the plaintiff, Ballon, Stoll & Itzler.

The gravamen of what was agreed on those occasions was that Neisco would be funded for the purposes of the Chapter XI, not only for the purpose of paying the attorneys, paying the accountants, the administration costs of the Chapter XI, but also the veryfunding that was necessary to pay the creditors their dividend in the event that the Chapter XI was approved.

This pended in this very court for two years, during which time the parties had some difficulty working out some arrangements with the government and some other problems, and then for some reason that nobody can quite understand, at least it was not apparent at the moment, at the very moment when the referee, Roy Babbet, the bankruptcy judge now, was ready to permit approval of a plan that was already accepted by a majority of the creditors, suddenly the fund announced through their attorneys, who by the way, are the attorneys here today, that they weren't going to go forward with funding the plan.

The reason why it was a very big surprise was because the fund had already put up $1,600,000 during the pendency of the Chapter XI, and even the referee said they didn't understand why now they wouldn't want to go forward.

They gave an excuse that Mr. Horvath, who was the principal, had apparently given some evidentiary material to the attorney general, had appeared in this courthouse on a trial against a man who was associated with the fund in some way, with some criminal activity in which he was involved. As a result, that man went to jail.

They said that that may have been the reason why they suddenly pulled back. Be that as it may, your Honor, as a result of it, the Chapter XI failed because there was no money to fund it, and the attorneys, Ballon, Stoll & Itzler, amonst other people, didn't have any money by which they could obtain the fees for which they were entitled because in essence they had done everything that had to be done for the approval of a plan.

Consequently, they were out the amount of money that they had agreed with the fund would be necessary for their fees, that being $100,000. They only received on account $25,000, which interestingly enough, your Honor, this very fund caused that $25,000 to be paid to the plaintiffs through one of the sister corporations of Neisco, and so as a result they had no other alternative other than to institute this action.

By the way, your Honor, part of the proof will show that the fund somewhere along the line, through their own minutes, it will be demonstrated, actually contemplated backing off on this while they were representing to counsel, to Neisco, Neisco and this Court, that they intend to go foward on it.

We will show that as part of the fraud action which is the second cause of action.

THE COURT: All right. Thank you, Mr. Knigin.

Do defendants with to respond?

MR. SCHWARTZ: What Mr. Knigin has said is interesting but really has nothing too much to do with the case.

What this case is about is very simply an action by a firm of lawyers for legal fees for services rendered to Neisco, who is not a party to this action at all, in Chapter XI proceedings, which they claim the fund, the defendants, A, agreed to pay by an express contact, and, B, represented that they would do certainthings, which constituted a fraud because they didn't intend to do them and therefore they have a cause of action for fraud.

It would be helpful to your Honor to try and analyze what the case is really about. The first cause of action is an alleged express contact by the fund to the plaintiffs to pay their legal fees if they would undertake a Chapter XI proceeding of Neisco. The fund would pay their fees directly, willy nilly, regardless of the outcome, period. That is a very simple claim.

The second cause of action is for fraud. The fraud being that the fund represented to the plaintiffs that they would finance a plan of arrangement, no specific terms, but a plan of arrangement without any conditions to bring Neisco out of Chapter XI as an operating going concern, and that the fund didn't intend to do that at the time they made the promise; that the plaintiffs relied upon that promise to their damage, that they were defrauded and they want their fees paid.

The third cause of action is an after thought, that was added about a year and a half after the action started, and that is virtually identical with the second cause of action for fraud, except that it is based upon an express contact to do the same thing that they say they were defrauded into relying upon.

The facts of the matter are these: First of all, there was an absolute and direct conflict of fact as to whether or not there was any of the agreements which they claim. We claim there was no such agreement to pay fees at any time under any circumstances.

What the fund agreed to do was this: Neisco approached the fund in 1969 for more money. At the time Neisco owed the fund about a million and a half dollars, all of which was secured by lease.

The fund was the largest creditor and the amount of the liens as it turned out were more than the whole value of the company's assets.

The principals of Nesico were two brothers, George and Ernest Horvath. The Horvaths had other companies like Masmo, Mt. Clemens Corporation, many of which were borrowers from the fund in separate transactions. The common link was that the Horvaths were interested.

In the middle of 1969 the Horvaths first approached the fund for more money. They spoke to some of the trustees. In October of 1969 they came in, they said "We need money otherwise we have to go into reorganization," and so on.

They wanted a million two hundred thousand, three hundred thousand dollars, something like that.

The fund said,"Let our accountants look into the situation. We will see what you need." And they did. They looked into it. The fund had their own accountants check into it.

The Horvaths needed a million six. The fund said "We will advance you a million six against certificates of indebtedness and we hope that will bring you out."

There was no agreement to pay fees, there was no agreement to do anything except to advance this money to attempt to work out a plan of arrangement to rehabilitate the company.

What that plan of arrangement would have involved was a dividend to General Creditors, a postponement of the tax claims which turned out to be about a half million dollars; a payment of administration expenses.

Later on, it also developed that the Horvaths made certain claims for lifetime consultation agreement, there were claims as to the Montmartre Hotel in Florida, and other interests, this is a very complicated thing and I don't want to bore your Honor with the details now.

The fact of the matter is the fund agreed to advance a million six. It did advance a million six. The company never got to the position where it could come out of reorganization. Eventually it went into bankruptcy, it was adjudicated. The fund, for an additional $50,000, bought all other trustees, right, title and interests in the assets, and that's where it rests.

The plaintiffs did receive a payment on account of the fees. They wanted a retainer of $25,000, which they got from one of the Horvath companies, it was paid to them.

The fund had some control over that because at that time that company was also in default and the fund had a representative there who countersigned checks, so they had to approve the payment, but they did and they were paid.

Essentially, on this phase of the case we have a conflict of fact as to whether there was or was not a contract, whether there was or was not fraud.

A second very important factor in the case is whether the plaintiffs can sue by reason of their conflict of interest. The Neisco Company in reorganization was a debtor in possession.

I know your Honor does not have too much background in the bankruptcy law so let me explain that.

A debtor in possession is the equivalent under the Bankruptcy Act to a trustee in bankruptcy. He has all the powers of the trustee in bankruptcy. That means he represents the general creditors, his interests are directly adverse to any lien creditors or anyone claiming priority, and we have in this situation a firm of lawyers who wanty to be paid by the biggest lien creditor having the most adverse position against the estate itself, the general creditors, for the services rendered to the estate.

We also have in the bankruptcy rules a section, section 215 of the bankruptcy rules, formerly general law 44, which requires a debtor in possession who retains counsel to obtain an order of the court authorizing the approval. Without an order of the Court they can not be paid anything for the services to the bankrupt.

That order requires that the attorney, as well as the principal, state any conflict of interest between the attorney and any other creditor or any other interest involved in the estate.

The affidavit was submitted in this case, was a petition by George Horvath as treasurer, and an affidavit by Ronald Itzler, one of the plaintiffs, as the attorney, who stated they had no interest adverse to the estate. At no time did they disclose any arrangement such as they claim in this action with the fund for payment of their fees, and if they had disclosed that it would have been almost automatic that they could not be retained as attorneys for Neisco because they had a direct conflict of interest.

Their job as attorneys for the estate would have been to check the fund's liens, to vacate any liens that were not valid. They had to fight the fund and not protect the fund.

Under that conflict of interest, and by not complying withthe rules, we claim they are estopped to make any claim to the fund for fees for representing an adverse interest, an interest adverse to the estate itself.

THE COURT: Assuming for the argument that the plaintiff firm did depart from the bankruptcy rules in respect of disclosure, I can see how that might give them some difficulty in getting the bankruptcy judge to approve a request for an allowance, but does it form a basis for estoppel to protect these particular defendants with respect to the theories of liability that are alleged against them?

MR. SCHWARTZ: I think it does, your Honor. Actually it's a two-fold issue. One issue is an issue of fact whether there was an agreement, and in view of their representations that there was no agreement, we will also show that during the course of the bankruptcy they made direct representations to the bankruptcy judge that if they were going to be paid they would be paid by Neisco, and under the normal course of events, if there were a successful plan of arrangement they would be paid by Neisco and not by anybody else.

They never disclosed to the bankruptcy judge at any time during the two-year period that this carried on that they had such an arrangement.

The other issue is a matter of law estoppel, I believe they are estopped. I don't think lawyers have a right to represent two masters having a conflict of interest and recover payment from one or the other.

It is to me inconsistent with their duty to the estate and would be against public policy, in my opinion, to permit them to recover from anybody, even if they were in contract as they allege. It is the same sort of principal that would apply that if someone bribed them to do something and didn't pay the bribe they could sue for the bribe. They can't.

I think this claim is so much against public policy that it is in the class of illegality to that extent. In any case, they would have needed the Court's approval on disclosure in order to be entitled to get paid for the services rendered in bankruptcy.

Those are the basic issues in the case. I obviously don't think your Honor wants any evidence or a sketch of detail. There is also a subsidiary question of jurisdiction, whether the fund that is properly subject to the jurisdiction of this Court. The fund is a Chicago, Illinois common law trust. The trustees are all non-residents of New York. It does no business in New York. I don't think you can consider lending money which was all loaned in Chicago at the fund's office, I don't think it can be considered doing business in New York.

THE COURT: Thank you.

MR. SCHWARTZ: One further statement, your Honor. In my memorandum I had suggested that we split this trial into two sections, one is the liability issue and the other is the services.

The services claimed here are voluminous, they run over two years. They claim 1600 hours of time. There are a lot of questions involved in that and we can spend a couple of days on that alone if we get into the nitty gritty of what they did.

I would therefore suggest to your Honor and request that you try only the issue of liability at this time, determine that first before we get into what the services are worth or what was done and all of that sort of thing.

THE COURT: I noticed that suggestion in your memorandum, Mr. Schwartz.

What do you say to that, Mr. Knigin? It seems to me there is something to be said for a bifurcated trial, to have the actual value of services await determination on questions of liability.

If the plaintiff prevails on questions of liability they may very well be stipulated, I suppose --

MR. KNIGIN: There is no objection by the plaintiff. I think it is a very reasonable approach.

I know that your Honor didn't ask for rebuttal, and I know this is not a debate, but there is one point that I didn't want the trial to leave the dock with this kind of an impact.

One point that I want your Honor to be aware of is going to be the proof of the plaintiff, and there is no inconsistency under the rules of bankruptcy practice concerning what was stated by Mr. Itzler in his affidavit concerning no adverse interest.

Let me tell your Honor exactly what our position is, and it is very sharp: The position is that we were only looking to Neisco for our fee. There is no question about that. We were looking to Neisco to have the funds by virtue of payment to it of the funds necessary to fund the Chapter XI and that was the promise of the fund.

We didn't represent the fund. The fund merely made the promise that they would provide the proceeds by which the Chapter XI could take place and by which the administration costs of that Chapter XI proceeding could be paid. But obviously it was going to be paid to Neisco, the debtor, who would then in turn pay it to its attorneys.

Without that money there was no chance in a billion from the very outset of this case that there could have been a plan, that there could have been an approval or that there could have been a discharge. It could never have happened, your Honor, and the fund knew it and they knew we relied on it in our actions. That is why we are suing them in this case. It is not because of the fact that there was any type of secret relationship between the fund and Ballon, Stoll & Itzler which we neglected to reveal to the Court.

Everybody in the courthouse knew about the fund. They were present in the court. Their attorneys were present in the Court. They knew about the million six hundred thousand dollars that they were putting up, everybody knew everything about the fund's existence and as a matter of fact Referee Babbet, on the day that the fund announced that they were pulling back, said, after all this time, you being the only parties that were even contributing, you being the only hope, now you are going to pull back?

Everybody from Chicago to New York knew who was going to pay the money and what they did, your Honor, was back off for their own reasons, whatever that may be, which we hope to prove here, but whatever it is, it was certainly not because of any kind of hanky panky on the part of the attorneys for the plaintiff -- the plaintiffs themselves, rather, because that was not the issue.

MR. SCHWARTZ: May I respond?

THE COURT: Briefly.

MR. SCHWARTZ: Mr. Knigin has just suggested to the Courtwhat is really the first time that this suggestion has been made in this litigation. It is inconsistent with the pleadings based on contract. Those pleadings allege a direct agreement to pay by the fund to the plaintiffs.

If they claim -- as a matter of fact, let me just add another sentence to that. There is no claim in this complaint that there was a third party contract to the betterment of these plaintiffs.

The theory which they now urge can have validity only--because Neisco was not the plaintiff suing -- can have vanldity only if they can make out a cause of action in fraud that representations were made to them that they relied on and that as a result they were damaged in working on a plan or towards a plan which was never funded.

The fact of the matter is that for that fraud to be a fraud that they could have relied on, it had to be made at the beginning with intent to defraud and with no intention of performing any commitment.

The fact of the matter is the fund did put up $1,600,000, which is completely inconsistent with any claim of fraud at the time they made the promise to put up the money to fund whatever had to be done.

Now, in view of Mr. Knigin's statement just now in rebuttal, I would like to move to dismiss the first and the third cause of actions which are based upon a direct contract between the plaintiffs and the fund, because what he said is inconsistent with what they plead.

THE COURT: I will reserve on motions to dismiss until I've heard the evidence.

Thank you, gentlemen. Let's get to the evidence. Mr. Knigin, will you proceed.

MR. KNIGIN: Mr. Ballon.

Your Honor, the first witness for the plaintiff will be Frederick E. M. Ballon, the senior partner of the firm of Ballon, Stoll & Itzler.

FREDERICK E. M. BALLON, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KNIGIN:

Q Mr. Ballon, are you an attorney at law?

A Yes, I am.

Q How long have you been practicing as such?

A Over 40 years.

Q Are you the senior partner of Ballon, Stoll &

Itzler, the plaintiff in this action?

A Yes, I am.

Q By the way, is that the successor firm to the firm of Ballon, Stoll & Shyman?

A Yes, it is.

Q Was the firm known as Ballon, Stoll & Shyman at the time that the circumstances first arose concerning the subject matter of this proceeding?

A It was.

Q By the way, was the firm located at 1450 Broadway at that time?

A Yes.

Q Where is it located now, Mr. Ballon?

A I beg your pardon?

Q Where is it located now?

A 1180 Avenue of the Americas.

Q Are you admitted to practice in the courts of the State of New York?

A Yes, I am.

Q Are you admitted to practice in this court?

A Over 40 years.

Q Have you been involved primarily in the practice of bankruptcy law during that period of time?

A To a very large extent, yes.

Q Have you handled many bankruptcy cases in the firm of Ballon, Stoll & Itzler and its predecessor law firms?

A Yes, I have.

Q Are these cases that are well known from the point of view of the largeness of them, their size?

A Yes, they are.

Q Have you been recognized as a bankruptcy expert by your colleagues and associates?

A I believe I am.

Q Doesthe firm of Ballon, Stoll & Itzler handle bankruptcy cases which are referred by other law firms?

A Yes, to a considerable extent.

Q Has it been your responsibility as the senior member of that firm during the last 40-odd years to supervise the activities of the office in connection with the processing of these bankruptcy cases?

A It's part of my duties, yes.

Q Could you give us an approximate estimation of how many bankruptcy cases a year are handled by Ballon, Stoll & Itzler?

MR. SCHWARTZ: If your Honor please, I think we can concede Mr. Ballon's expertise in bankruptcy. I take judicial notice of it.

THE COURT: That is what I was waiting for. Thank you.

Q Did there come a time in and aboutthe end of 1969 when you had occasion to travel to Chicago, Illinois?

A Yes.

Q Could you give us the date a little more definitively?

A On November the 5th, 1969.

Q Could you tell us the circumstances which caused you to proceed to that destination?

A Prior to our trip, a day or two before that time, I had a conversation or two with the general counsel for the fund, Joseph Teitlebaum, and I had had several conversations with Mr. George Horvath in connection with the fact that Neisco was in desperate need of additional funds, and he was having difficulty getting the funds fromthe pension fund.

Q Who is Mr. Joseph Teitlebaum, Mr. Ballon?

A General counsel to the pension fund.

Q Who was Mr. George Horvath?

A He was the chief executive officer of Neisco and all of the affiliated corporations.

Q When you say affiliated corporations, do you know approximately how many there were?

A If I recall correctly, there were 25 or so.

Q Are these affiliated -- withdrawn.

Start with Neisco. Did you just state that Neisco at the time that you were first going to Chicago was already then a debtor of the pension fund?

A Yes.

Q To what extent, do you know?

A At leaset to a million and a half dollars or more. But there was an overall indebtedness of the various corporations to the fund from the Horvath interests in the various corporations, I think that was possibly in the neighborhood of ten, twelve million dollars, I don't recall exactly the amount.

Q I'm sorry I interrupted you, but now at this particular time, what was the immediate problem which caused you to sojourn to Chicago?

A Mr. Horvath requested me to accompany him to a meeting of the trustees of the fund in Chicago in connection with his attempt to obtain additional funds or monies from the fund by way of loans or advances to the Neisco Corporation.

Q At that particular moment in time, had you and Mr. Teitelbaum or -- is it -- had you and Mr. Teitelbaum already discussed the approximate amount that Mr. Horvath was seeking?

A I don't recall. I remember the amount that he did ask for when we got down to Chicago.

Q What was that amount?

A Somewhere around a million and a quarter. It was either a million and a quarter or a million three hundred thousand dollars.

Q Did you travel to Chicago with anybody else?

A Yes. Mr. George Horvath and Mr. Jack Polish.

Q Who is Mr. Jack Polish?

A He was house counsel to the Horvath interests in the various corporations.

Q Did there come a time when you arrived in Chicago and met with the representatives of the fund?

A Yes, on November the 5th.

Q Have you any recollection as to who were the representatives that were present at that time?

A Yes. We met in the offices of Mr. Alan Dorfman, or his corporation. There was present at that time Mr. Teitelbaum, Mr. Joseph Radom, who is sitting in the courtroom, Mr. Matheson, Mr. Barron, I think his name is Al Barron. I believe Mr. Duffey was there, Mr.

Polish, Mr. Horvath, myself and there were one or two other persons there, I don't recall who they were.

Q Mr. Duffey and Mr. Matheson, who were they, what were their roles?

A Trustees, and so was Mr. Barron, trustees ofthe fund.

Q What was Mr. Radom's role, as you understood it at that time?

A I was introduced to Mr. Radom at that meeting and was advised that he was retained by the fund being a specialist in the bankruptcy field to advise the fund in connection with the request that they were going to make or they did make at that time that Neisco file a Chapter XI petition.

Q Who was Mr. Dorfman?

A Mr. Dorfman was a general advisor to the fund. I think he wrote all the insurance for the fund, and he was a general factotum. He seemed to be running the entire operation. I think he was very closely connected with Mr. Hoffa at that time.

A Isn't Mr. Dorfman the person who was subsequently convicted just after -- just before the pension withdrew their support?

MR. SCHWARTZ: If your Honor please, I

don't know what relevance that has with the trial. I would suggest that counsel does not testify and lead the witness.

MR. KNIGIN: May I be heard on the objection, your Honor?

THE COURT: I will hear you on the relevancy.

MR. KNIGIN: There is actually a part of this matter, the bankruptcy proceeding that is going to be introduced in evidence, ni which in open court -- in this very courthouse -- the union representatives indicated that there seemed to be some disinclination for the fund to go forward because of the conviction and Mr. Horvath's cooperation with the United States Attorney in the conviction and indictment of Mr. Dorfman.

I just thought that the relevancy of this, that he was present at the very first meeting was a very, very real part, particularly inasmuch as it relates to the proceeding in fraud.

THE COURT: I will overrule the objection, but subject to connection.

MR. KNIGIN: Thank you, your Honor.

BY MR. KNIGIN:

Q Now, --

A I didn't answer the question.

Q Is that the gentleman who was subsequently indicted and convicted?

A Mr. Dorfman?

Q Yes.

A Yes. In this court.

Q And Mr. Horvath was a witness in his trial against him?

A He was a witness for the people, yes.

Q I'm sorry, I don't know that I understood you. Did you say that Mr. Teitelbaum was also present at that time, Mr. Ballon?

A Yes, he was.

Q And he was, as you described him, general counsel for the fund?

A Yes.

Q Now, did conversations begin to take place between all the people then assembled?

A Yes. Mr. Horvath made his presentation and request for an advance -- additional advance of a million and a quarter by the pension fund to the Neisco Corporation.

In connection with that, he had prepared facts and figures indicating, by way of cash flows and projected sales, change of operations and various other things, that by the advancing of these funds the corporation will be completely viable and that it could go ahead and be successful.

THE COURT: Mr. Ballon, let me ask you this: Why was it thatyou were participating in this Chicago meeting; had your firm previously represented Neisco?

THE WITNESS: Yes.

THE COURT: For a considerable period of time?

THE WITNESS: Yes.

THE COURT: Thank you.

THE WITNESS: Many years.

THE COURT: Very good.

BY MR. KNIGIN:

Q Now, what if anything did the fund say concerning Mr. Horvath's request?

MR. SCHWARTZ: If your Honor please, may we have any conversations attributed to specific individuals and as well as the witness can relate what they said, not his conclusions as to what they meant or anything like that.

We had a lot of difficulty with that on the depositions before trial, and I would like to know who said what and I should think the Court would want to know who said what.

THE COURT: Frame your question as precisely as you can, Mr. Knigin.

Q Mr. Ballon, did anybody on behalf of the fund respond to the request of Mr. Horvath?

A Mr. Dorfman did a great deal of talking. Mr. Matheson did some of the talking and when it came to technicalities, Mr. Teitelbaum, who was highly involved, would speak, and later on in the meeting Mr. Radom participated.

Q After Mr. Horvath made his presentation as to what it was thathe wanted, did somebody on behalf of the fund then respond?

A Well, to the best of my recollection, Mr. Matheson and Mr. Dorfman both interrogated him as to why he felt that the fund -- firm would now be successful with an infusion of new funds or new monies when it had been losing money up until that point.

He responded by indicating his cash flow projection and the fact that there was a change in operation and a change in the type of product that was going to be produced, and that new customers had been secured and they were doing a certain amount of business -- if I recall correctly, in the automotive industry, and all in all, he was trying to convince them as to the necessity for advancing these funds.

He was pointing out at the same time -- this conversation came back and forth, a repartee, we were in the room and then we were excused from the room. This was a very large room, I would say it was a large as this courtroom, with a large circular table, and people were sitting all around the table.

We would make our presentation and talk, we would be questioned and interrogated and then we would be excused from the room and we would go out to a sort of an outer office and sit around outside.

When I say "we" I mean Mr. Horvath, Mr. Polish and myself. Then we would be called back into the room.

I would say that these -- this particular meeting on November the 5th went on for at least eight hours or more.

During the course of that, the fund agreed or made statements -- they were made by Mr. Matheson or Mr. Dorfman, I don't recall -- to the effect that they could readily see where they wanted a firm in business, and although they had security and they had all the assets under a lien, they were not interested in making any further advances unless a Chapter XI petition were filed under the Bankruptcy Act.

Q Did they say why specifically they wanted to have a Chapter XI proceeding as against merely foreclosing on their secured interest?

A Yes, there was considerable discussion along that line. Number one, they didn't want to make any advances unless they were subject and pursuant to a court order, and that certificates of indebtedness would be issued in the Chapter XI proceedings under and pursuant to the court order entered in these Chapter XI proceedings by a referee in bankruptcy, who is now known as a judge in bankruptcy.

In addition to that, there was considerable concern on the part of the fund that they wanted a countersignator on the checks.

There was considerable concern that they didn't want Mr. Horvath to divert any of these funds to any of the other 20-odd corporations owned and controlled by the Horvath family, and they wanted the funds kept right in here so that the entire proceeding would be subject to a court supervision in the Chapter XI proceeding.

Of vital importance was the fact that although they had a lien upon all of the assets of Neisco at the time, and could very well have foreclosed, it was generally acknowledged and agreed by all parties, by Mr. Horvath as well as by the representatives of the fund, that foreclosing on the assets would result in a loss to the fund; that the assets were inadequate and insufficient on a forced sale to enable Neisco to repay to the fund the monies that had theretofore been advanced, a million and a half, whatever the sum of money was at that time.

Whereas it was pointed out very succinctly that as a going business, and if Mr. Horvath's projections and calculations and figures were correct, his in-house auditing figures were correct, and that the company could go forward, then the fund could successfully come out and be repaid all of the money it was -- that was owing to them as well as the interest on that money.

Therefore, they felt that this could only be done in a Chapter XI proceeding. Mr. Horvath at the time was extremely adverse to filing any Chapter XI proceeding. He didn't want to do that under any circumstances and a great portion of the meeting was devoted to the members of the fund and their counsel urging him and persuading him to go along with the Chapter XI proceeding.

Q Was this all part of the discussions as you came --

A I'm sorry, I can't hear you.

Q Was this all of the discussions as you left the room and came back into the room?

A Yes.

Q Mr. Ballon, was there any portion of that time utilized for discussions concerning the cost of funding the plan?

MR. SCHWARTZ: If your Honor please, at this point I request counsel should not lead the witness at all. This is a crucial basis for their claim.

THE COURT: See if you can rephrase it, Mr. Knigin.

MR. KNIGIN: I didn't realize that was leading. I was trying to get into the general subject matter.

Q Mr. Ballon, in addition to the discussions concerning the loan of $1,250,000, or any other monies, to Neisco, and the discussions with Mr. Horvath, and the discussions concerning Chapter XI --

A Some were --

Q Were there any further discussions?

A Sometimes during the course of the meeting, going back and forth, Mr. Horvath finally came to the realization that he would have to go along with the fund's request and demand, I should say, that a Chapter XI proceeding should be filed.

Sometime during that time I telephoned my New York office and spoke to Mr. Itzler and requested that he start the preparation of such papers.

A great portion of the rest of the meeting was devoted to a discussion concerning Montmartre. The Montmartre Hotel is a hotel down in Miami Beach which was owned by several of the Horvath corporations at that time, and to which the fund, the pension fund, had loaned a very substantial sum of money, I don't remember whether it was $6 million or $8 million, and they were concerned about that, and that took up a great deal of the time of the conversation.

Coming back to the Chapter XI, and after we had -- I should say Mr. Horvath had agreed to go along with the Chapter XI, I was asked what would be involved in the Chapter XI proceedings, and --

Q Who asked you that?

A Most of the technical questions came from Mr. Teitlebaum, primarily and eventually some of them came from Mr. Radom.

Q When they asked you that question what did you say?

A I -- at the beginning, the question was then what the procedure would be, how would it take place. I explained that we would file the petition and thereafter, in due course, there would be no hurry about it, but eventually I would call a general meeting of creditors. And I felt that with my standing in the creditor community, I wasn't too concerned about that meeting, and I felt confident that we would have a friendly committee of creditors appointed and that counsel would be selected by that committee to act for them..

I didn't think there would be any accountants in the case because a firm of very good reputation in the textile trades by the name of Wasserman & Taten were then acting as accountants for the Horvath firms, and I felt the creditors would go along and keep them on the books and be satisfied with their reports.

Mr. Matheson, I think, pointedly at one point wanted to know what would be involved by way of the funds necessary for the fund -- I say the fund, I mean the pendion fund -- to advance in order to consummate this Chapter XI proceeding which would be filed.

Q Was this part of the $1,250,000?

A No.

MR. SCHWARTZ: I must object. Counsel is leading the witness on a crucial point.

THE COURT: That is not a leading question. I will overrule your objection.

MR. SCHWARTZ: I think he should ask the witness what was said in this respect by Matheson, by him, by anybody.

THE COURT: I will overrule the objection.

A It was not part -- it had nothing to do with that.

Q I am sorry I interrupted you then. Continue.

A The $1,250,000 requested by Mr. Horvath was strictly in connection with the operation of the corporation. Its day to day operations by way of monies that it needed for purchase of cotton, raw cotton, payment of wages, past due bills, and various things of that sort, and cash flow projections -- they had to weave inventory and have it ready for delivery, for example, to automotive companies and things of that sort -- companies of that sort.

So consequently they needed that $1,250,000, according to Mr. Horvath's figures, in order to successfully operate and go on to a profitable basis.

According to his figures -- I don't recall them at this time -- it showed that after two or three months they would achieve a profitable operation. I think, if I recall correctly, the first month shown, he projected a certain loss which then would turn into a break even status and then would finally achieve a profitable status.

Mr. Matheson wanted to know what would be needed aside from that in order to be able to fund or finance this particular Chapter XI proceeding.

I went into specific detail in connection with that and pointed out that the creditors were somewhere around $400,000 or $500,000, and that I hoped, from my past experience -- based on my past experience, and based on the figures that I had available to me in this case, and my knowledge of the facts of this case, and who the creditors were -- I felt that I should be able to put through a settlement with credigtors of 15 cents on the dollar.

I figured that would be at maximum -- it undoubtedly would be less, but I figured the maximum amount, and I felt I should in all fairness speak of maximum amounts at that time -- would be $75,000 for general creditors.

THE COURT: How much?

THE WITNESS: $75,000.

Q By the way, when you say general creditors, is that all the creditors?

A General unsecured creditors.

Q Was there any other kind of creditor?

A In addition to that, the internal revenue had a very, very substantial claim, somewhere between four and five hundred thousand dollars, and I explained to Mr. Matheson and theother people in the room that there was an unwritten rule, a rule of thumb, that IRS would not consent to a Chapter XI plan unless they received as an immediate payout in cash a sum equivalent to that which was being paid to general unsecured creditors.

In other words, that they had to contemplate -- the fund had to contemplate an additional $75,000 to be paid to IRS.

Q What was the IRS claim at that time?

A I believe it was somewhere in the neighborhood of $450,000, maybe it was $500,000. But I was figuring maximum amounts, as I said.

Q Besides the general unsecured creditors and the IRS, was there any other kind of creditor?

A Aside from the fund?

Q Well, now, what kind of a creditor was the fund?

A The fund was a secured creditor. They had a mortgage and lien -- chateel mortgage and lien and security interest on all the other assets -- all of the assets of the Neisco Corporation.

Q Did you examine the financial statement of Neisco at that time?

A Did I have it with me?

Q Yes.

A I believe Mr. Horvath had it with him.

Q Do you recall what the amount was that was owed to the secured creditor at that time?

A As reflected on that sheet?

A I believe it was in excess of a million and a half dollars.

Q Is that the end of your conversation with Mr. Matheson?

A No.

Q Would you continue now with your response to Mr. Matheson?

A I explained to Mr. Teitlebaum and to Mr. Radom, as they would understand better than Mr. Matheson, that there would be an attorney selected by the creditors committee, and in due course when the plan was confirmed, that those attorneys -- the attorney or attorneys for the creditors committee would have to be compensated, and I felt that in all fairness that we should compute or estimate $25,000 as a fee for the attorneys for the creditors committee.

I felt that it would not exceed that amount. In addition to that, I told them that there would be incidental disbursements for the costs and to the referee's fund, as it was then known, which would not exceed four to five thousand dollars.

I didn't think there would be a secretary, but if there would be a secretary to the creditors committee, that that fee would be made a thousand dollars.

I finally indicated that I could not -- my firm could not undertake to file this Chapter XI petition except with an agreement on the part of the fund that we would be paid immediately $25,000 as a retaining fee.

Mr. Matheson quickly jumped at me and said, "Well, that's your retaining fee. What would your overall fee be?"

At that time I told him it was difficult to estimate a fee in advance, and the rule, if the application would be made to the court -- in other words, if the debtor itself, if Neisco itself were being -- was going to pay the fee, an application would have to be filed with the court and the referee in bankruptcy would fix the fee.

However, if the fund were going to arrange to to have third party money paid to me as the fee, whether it would be through Montmartre Corporation or any other corporation, or any other device that the pension fund decided to utilize in making payment of the necessary monies to my fidm, that we could agree upon an additional fee of $75,000, and I felt that a fair estimate would be $100,000 overall as the fee for my firm.

Q What did Mr. Matheson say about that?

A There seemed to be general agreement -- there was general agreement by everybody to my statement.

MR. SCHWARTZ: May I strike out the last answer?

THE COURT: I will disregard that answer. I cannot accept your impressions of whether or not there seemed to be general agreement.

To the best extent that you can, and I know that it is difficult, I want to know exactly what was said and by whom.

THE WITNESS: I was asked what would be involved in filing and what the cost to the fund would be in going through with consummating a plan.

I told them, and in turn they agreed and authorized me to go ahead and prepare the papers, that that would be completely satisfactory.

THE COURT: You mentioned various cost factors when you were responding to this question, as I understand it.

Just thinking ofthe attorneys' fees as the cost factors for a moment, first you said to them in this meeting that you would anticipate compensation to counsel to the creditors committee of about $25,000, right?

THE WITNESS: Correct.

THE COURT: Then you mentioned additional court costs of maybe another four or five thousand dollars, right?

THE WITNESS: Correct, your Honor.

THE COURT: And then as the next cost component factor you said that in respect of your own firm, to file the Chapter XI proceeding on behalf of Neisco, there would have to be a retaining fee of

$25,000, is that correct?

THE WITNESS: That is correct.

THE COURT: Now, when you mentioned that particular figure as a retaining fee, did anyone on behalf of the fund respond?

THE WITNESS: Yes. Everybody -- when I say everybody responded, I would say that several people probably -- several people did respond. There was no question about the payment of the $25,000, "We'll arrange for that."

THE COURT: Who said that, do you remember?

THE WITNESS: It probably -- well, I shouldn't say "probably" -- I would say that most of that conversation was led by Mr. Teitlebaum.

Mr. Matheson is the one that jumped in and wanted to know what the total fee would be, I remember that very,very vividly.

THE COURT: Mr. Matheson wanted to know what your firm's total fee would be --

THE WITNESS: Yes.

THE COURT: -- in connection with the Chapter XI proceeding?

THE WITNESS: Chapter XI.

THE COURT: What did you say to him when he asked that.

THE WITNESS: I told him that if the Neisco Corporation were going to pay the fee directly, that an application would have to be made to the referee in bankruptcy and the referee in bankruptcy would fix the fee.

However, if the pension fund were going to arrange for the -- for my firm to be paid by another corporation, by a third party, whether it would be by Montmartre or by any other of the Horvath corporations, or any other device or corporation that they might employ or use at thattime, that I could come to an agreement with a third party as to the amount of the fee, and pushing me as to what that agreement would be, I mentioned $75,000, and Mr. Matheson said "Okay."

THE COURT: That $75,000 was in addition to the $25,000 retainer?

THE WITNESS: Yes. In other words, an overall fee of $100,000.

THE COURT: So what you were suggesting then to Mr. Matheson and his colleagues, as I understand it, was an alternative method of compensation for your firm in connection with Chapter XI, and by alternative I mean not a direct paymentby Neisco, which, as you say, would require the approval of the referee, but a compensation arranged bythe fund through what you have referred to as some third party, is that right?

THE WITNESS: That is correct, your Honor.

THE COURT: All right.

THE WITNESS: If I may be so bold as to explain this, this must be taken in its context because at that point conversation ensued as to how they were going to pay the $25,000, and at that point discussion took place that the payment could be made through the Montmartre Corporation.

Eventually the question came up as to whether it would be paid immediately or be paid by notes, and it was a complete agreement on the entire aspect of the thing, I was told to go ahead and prepare the papers and be ready to file with the various other problems that would be resolved -- that was in connection with Montmartre and with several other things that happened to be involved at the time that I don't recall at the moment.

THE COURT: I'm sure Mr. Knigin will bring forth the additional details.

BY MR. KNIGIN:

Q Just to skip for a moment, Mr. Ballon, a little bit further ahead, did you ever receive the $25,000?

A Yes, we did.

Q By whom was the $25,000 paid?

A It was paid by Montmarte, with much difficulty, because --

Q Who?

A I'm sorry.

Q By Montmartre?

A Montmartre.

Q Did Montmartre have resident in their company at the time that the fee was paid to Ballon, Stoll & Itzler --

A Did it have what?

Q Did it have resident in its corporate offices a countersignatory?

A I think they already had someone in there, whether he was countersigning checks already or not at that moment I don't recall. Someone was in there that the fund had already put in the Montmartre to supervise, but part of the negotiations thattook place in the next 10, 11 days between Mr. Teitlebaum, Mr. Radom and myself, involved the question of putting a countersignatory down there as a supervisor watching out over the Montmartre Corporation.

Q Were the payments received by Ballon, Stoll & Itzler of the $25,000, funds that were countersignatured by the representative of the fund at Montmartre?

A Yes. That was necessitated because I agreed at the request of the representatives of the fund to accept, instead of $25,000 immediately, 25 notes. I don't remember whether 5000 was paid immediately, but I believe I received five notes of $5000 each over a period of time, and each time one of them came due, this countersignatory put in by the pension fund had to countersign the check, and I ran into a great difficulty and had to call Mr. Radom several times in order to get my check, which was eventually -- which eventually it was countersigned and eventually I did receive the entire $25,000.

THE COURT: What was the Montmartre?

THE WITNESS: The Montmartre Hotel is a hotel in Miami Beach on Collins Road. There were several parcels of land. One parcel of land was owned by one corporation, another parcel of land was owned by another corporation and a third corporation I think held the stock of these two corporations, and then I think there was a fourth corporation operating the hotel.

THE COURT: All part of the Neisco family?

THE WITNESS: This is all part of the entire -- not Neisco family, I call it the Horvath family because Neisco, I would say, was the crown jewel at the time, or at least at that time they thought it was the crown jewel of the Horvath interests.

Q By the way, Mr. Ballon, in your 40-odd years experience as a bankruptcy lawyer, had you ever been a party to an agreement such as the one that you were discussing with the fund concerning third party payment as against a court order, had you ever been party to such an agreement before?

MR. SCHWARTZ: May I object to that question. It's irrelevant to any issues in this case.

THE COURT: I suppose that is true unless the defendants are going to criticize the arrangement in any way.

MR. SCHWARTZ: Even if they criticize it, that doesn't make it right or wrong. What he did with somebody else has nothing to do with what he did with us. The issue in this case it what arrangements, if any, were made with the fund, and were they or were they not legal or illegal, or against public policy. He may have had 20 other arrangements with other people that were against public policy and got by with them. That doesn't affect this case.

MR. KNIGIN: May I make the point that we have already conceded Mr. Ballon's expertise in the field of bankruptcy law. What I am going to do is ask him whether or not that is the established practice, and I don't think that is an objectionable question based upon his established expertise.

MR. SCHWARTZ: We are dealing with the bankruptcy law and not established practices, and I know that Mr. Ballon's expertise as a lawyer will change the law, but the law is what the courts hold it is and what the statutes say it is, not what the practice is.

There are many people who practice daily that are illegal, our Honor sentenced one earlier today, and that doesn't make it right.

I don't think the practice of what bankruptcy lawyers do in certain cases have anything to do with this case. We are being sued on contract and on fraud. I think we should stick to the contract between these parties, if any, and the fraud that was practiced, if any.

THE COURT: Well, Mr. Schwartz, the sands of public policy can be shifting at times, and I think that evidence of practice in this particular field may be of some help to me. I will overrule the objection.

MR. KNIGIN: Thank you, your Honor. May I for the record make a statement that there has been no law offered in this case, at least until this moment, including a review of the memorandum of law submitted by the defendants, as to the fact that there is any law against doing it. So that's the reason why I want to establish the practice.

BY MR. KNIGIN:

Q Now, Mr. Ballon, in your 40-some-odd years experience, have you ever been party to such an arrangement like this before?

A We have been paid our fee by third party money time and again -- very often.

Q Has that been the established practice in the practice of bankruptcy law for the past 45 years, as you know it?

A Oh, yes. Don't say 45 years. Chapter XI hasn't been in existence for that long.

Q For as long as --

A Yes. In Chapter XI proceedings third party money is very frequently used to pay fees.

Q Is there anything about that that is in any way prevented by the practice, as it has been done in this court, concerning private agreements between parties as to fees rather than by court order?

A No. Nothing at all.

Q At this first meeting that you had in Chicago, was there any resolution of everything that was discussed before you departed on that day?

A Yes. I was told to proceed to draft the papers for -- in connection with the filing of the Chapter XI proceeding for the Neisco Corporation, and that Mr. Radom and/or Mr. Teitlebaum would be in touch with me in order to iron out the other problems that were existing primarily in connection with the Montmartre situation.

Q Did you then leave Chicago?

A At that point we left, yes.

Q Now, in the next few days did you perform any services in connection with the Neisco situation?

A Well, I had several conversations in the next few days with Mr. Teitlebaum and I also believe with Mr. Radom in connection with drawing some sort of agreements with reference to the Montmartre situation.

Q This was Montmartre not Neisco?

A And always something with reference to

Neisco. I don't recall the agreements that were drawn, but primarily the big problems that were in existence were in connection with the Montmartre situation.

Eventually we drew them and thereafter Mr. Radom and Mr. Teitlebaum came to New York and we had a meeting, if I recall correctly, I think it was in the Neisco offices. Yes, it was in the Neisco offices, and -- oh, oh, I'm sorry, I left out part of the meeting in November the 5th because I just realized that Mr. Weisser was present at this meeting when Mr. Radom came to New York.

The fund told me to go ahead and prepare the papers. However, they said they wanted to send in their own auditor, and their own accountants in order to make a complete check to verify and ascertain the correctness and validity of the figures and presentation that had been made at that meeting by Mr. Horvath.

Q Who said that?

A That would be a combination of Mr. Dorfman, Mr. Matheson -- Mr. Barron may have said something to that effect. I think Teitlebaum probably said something to that effect, too.

Q Now, in the meetings that you had subsequent to Chicago with Mr. Radom and -- who else did you say came to New York?

A Mr. Teitlebaum, Mr. Radom and the accountant that the fund had selected, Mr. Weisser, who had already been working starting his audit. He was present.

Q Was Mr. Weisser a New York accountant?

A Yes, I believe he is. And --

Q Had he been out in Chicago, also?

A Not the first meeting. At least I don't recall him being there the first meeting. And Mr. Ehrenberg was present at that meeting?

Q Mr. Who?

A Mr. E-h-r-e-n-b-e-r-g, a partner in the firm of Wasserman & Taten, who were the accountants for the Neisco Corporation.

Q How long after you had returned from Chicago did this first meeting in New York take place?

A About six days later.

MR. SCHWARTZ: The witness is reading from notes which he seems to have before him. We ought to know this and possibly have it marked for identification.

Q Are you reading from notes which you have made for yourself for the purpose of your testimony, just yes or no, Mr. Ballon?

A I have just returned --

Q Are you reading from notes?

A I am reading from notes, yes.

MR. KNIGIN: We will be very happy to mark them for identification, with the Court's permission.

THE WITNESS: They are in my own handwriting.

THE COURT: They will be marked for identification.

(Plaintiffs' Exhibit No. 1 was marked for identification)

xx

Q As to Plaintiffs' Exhibit 1 for identification, Mr. Ballon, did you prepare the information that's on those papers?

A Did I prepare this?

Q Yes.

A Yes.

Q Where did you get the information from?

A I obtained this information from the examination before trial of myself that was conducted by Mr. Schwartz sometime ago.

Q Was this information that you extracted from those examinations?

A That's right.

Q Now, you said that the meeting between Mr.

Radom and Teitlebaum in New York with you, and the people you've already identified, took place about six days after Chicago, is that correct?

A November the 11th, to the best of my recollection.

Q What did you discuss at that time?

A We discussed the question of the agreement that would be drawn -- that was drawn with reference to the Montmartre situation, and some changes that Mr. Teitlebaum wanted in that. I don't think Mr. Radom concerned himself with that.

However, he did concern himself with the order we had prepared at that time for the advancement of funds by the pension fund, the million 250 that we were talking about originally, which he eventually turned out to be a larger amount.

Q What kind of an order are you talking about, Mr. Ballon?

A I think the interest rate was set forth at 7 per cent --

Q You are not listening to my question. What kind of an order are you talking about?

A Oh. It was a court order which had been prepared to be submitted in the Chapter XI proceeding which was going to be filed, which would provide for monies to be advanced and loaned to the Neisco Corporation by the pension fund and certificates of indebtedness issued under and pursuant to that, under and by virtue of which any of those monies would have a priority interest over and above all claims of anybody and everything of any nature.

Q Is it safe to say that that would make this protected money?

A Yes.

Q You had a discussion about that with Mr. Radom?

A Yes.

Q What was said?

A He wanted some of the clauses redrafted. In particular, I remember there was a change in the interest from 7 per cent to 9 per cent.

THE COURT: Who wanted those changes?

THE WITNESS: Mr. Radom.

Q Anything else?

A The changes in the Montmartre order or agreement I think were primarily requested by Mr. Teitlebaum, I don't think Mr. Radom concerned himself with that.

Q As far as the Montmartre discussions were concerned, Mr. Ballon, you weren't preforming any services at this point in connection with Montmartre, were you?

A No. But this was an integral requirement by the fund before they would agree to make a further advance and loan to the Neisco corporation.

If that happened -- all those problems had to be resolved in order to satisfy the fund to go ahead and make the advance and loan and to fund and supply the funds necessary to consummate the Chapter XI plan in the Neisco Corporation.

Q Who said that on behalf of the fund?

A Various members said it: Mr. Matheson said it, Mr. Barron said it, Mr. Teitlebaum was very vehement about saying it -- Mr. Teitlebaum concerned himself greatly with the situation down in Florida.

Q What else was discussed at this meeting on the 11th, or whenever it was?

A Well, there was considerable discussion between the accountants as to the figures, between Mr. Ehrenberg, Mr. Weisser and I guess -- and Mr. Horvath was involved in that -- I believe Mr. Polish was in the room, too, and Mr. Ernest Horvath may or may not have been -- I think he was in the room part of the time and out of the room part of the time.

Q Tell us what was discussed, Mr. Ballon ?

A We discussed the various figures, they discussed them back and forth, and the -- they were business discussions primarily. The legal discussions I have told you about already.

Q Is that the end of that meeting?

A Yes. As I recall, it is.

Q At that point in time had the petition in Chapter XI yet been filed?

A No.

Q Had the firm of Ballon, Stoll & Itzler received any money?

A No.

Q Was there another meeting shortly after that?

A I beg your pardon?

Q Was there another meeting shortly after that?

A Yes, there was a meeting in Chicago on November the 19th.

Q Who on behalf of the debtor Neisco was present?

A Mr. George horvath was there, Mr. Polish -- the controller for the Horvath corporations, I don't remember his name -- I think it was -- I'm not sure of the name, but I think it was London, but he was their controller.

Q Were you there?

A Yes.

Q Who on behalf of the fund was present?

A The ones I recall were Mr. Teitlebaum, Mr. Radom, Mr. Dorfman, Mr. Matheson, Mr. Duffy, Mr. Barron -- there was some man there that was an appraiser -- I don't remember his name at all, I think he was an appraiser of machinery and equipment, that was working for the fund and then there were one or two other persons there, I don't recall who they were. If I recall correctly, there were one or two other trustees there, but I don't remember their names.

Q Will you tell us what the general nature of the discussion was at that time?

A Mr. Weisser gave his report and indicated that according to his analysis and his investigation by his firm that the presentation made by Mr. Horvath was inadequate and that instead of Neisco needing $1,250,000 that the fund felt, as a result of Mr. Weisser's investigation,that Neisco needed $1,600,000.

This meeting, too, lasted very many hours and the net result of the meeting was that there was agreement -- the fund agreed that they would advance the $1,600,000 under and pursuant to the type of order which had already been sent down to Mr. Radom, which I believe he already had by the time of that meeting, and certificates of indebtedness would be issued pursuant to thatorder.

We again at that time went into the cost of the Chapter XI proceeding.

Q Now, Mr. Ballon, so there be no confusion in anybody's mind, you say you then went into the cost of the Chapter XI proceeding.

Are these costs the same as or in addition to the sum of money that was going to be advanced under the certificates of indebtedness?

MR. SCHWARTZ: If your Honor please, this is the same question I objected to before. Counsel is testifying for the witness.

THE COURT: It is a proper question. Was it the same or was it different?

MR. SCHWARTZ: I think the witness should say what was discussed in that connection. He ought to tell us what the words were he's talking about.

THE COURT: Overruled.

THE WITNESS: The million six had nothing whatsoever to do with the Chapter XI proceeding.

Q What was discussed about the Chapter XI proceeding?

A I was again asked to again enumerate what monies would be involved, how much monies the fund would have to be prepared to advance in order to fund the Chapter XI proceeding plan, or arrangement, as it is technically called.

I then went through the same figures and indicated that probably general unsecured creditors would have to be paid somewhere inthe neighborhood of $60,000, because I think we came down to a figure of $350,000 to $400,000 to general credigors by that time, so that we would have to pay general creditors $60,000. We would have to pay IRS, by virtue of this rule of thumb, an amount equal to what was being paid to general unsecured creditors, or $60,000, and hopefully make a plan with them on an extended payout for the balance of the 450,000 or whatever was owing to internal revenue at that time.

I felt confident that we could work out such a plan, and I assured the trustees of the pension fund that I could undertake that -- I would undertake to work out such a plan with internal revenue.

That made $120,000. I again pointed out that the attorney or attorneys for the creditors committee would probably require $25,000, which would bringit up to about $145,000. Miscellaneous expenses of 5000 would make it $150,000, and the total to my firm, including the $25,000 retaining fee, would be $100,000, or appro-imately $250,000 all over in order to fund the confirmed plan of arrangement in the Chapter XI proceeding.

Q What was said about that $250,000 at that time -- at that specific time, and who said it?

A Well, if I -- I definitely recall that there was an attempt to sort of pin me down and they said "It's perfectly all right if you go ahead and put this plan through, but you don't know at this piont whether you can settle with creditors at 15 cents, so let us say that you can go from 250 and not beyond $300,000 in order to confirm the entire plan."

THE COURT: Who said that?

THE WITNESS: I believe that was Mr. -- it was Mr. Matheson. He was very adamant on that particular subject.

Q Did you say that you could do that?

A My response was that I was confident and positive that I could do that.

Q Were you then given any further instructions by the fund members as far as the Chapter XI was concerned?

A I was told to go ahead with the filing.

Q Who told you that?

A Mr. Teitlebaum, Mr. Matheson, everybody in the room.

Q Of all the people that you described that were in the room, following your conversation, to review again how much it would cost the fund on the plan, did anybody say "Mr. Ballon, don't go forward with it"?

A Absolutely not.

Q Did you then begin to perform services on behalf of the XI proceeding?

A Yes, we did.

Q Did you in fact cause the petition in bankruptcy to be filed by your office?

A We caused the petition on the Chapter XI of the Bankruptcy Act to be filed on November 24th.

Q Who in your office took care of that, Mr. Ballon?

A Mr. Itzler.

Q Is he a partner in the firm of Ballon, Stoll &

Itzler?

A Yes, he is.

Q For the period that then followed, did the firm of Ballon, Stoll & Itzler perform services in connection with the Chapter XI proceeding?

A Yes, we performed all the usual customary services and very many unusual services in connection with the various disagreements between Neisco and the pension fund as to operations.

Q During that entire period of time, Mr. Ballon, did you have communications with representatives of the fund?

A Yes, I did. I was in constant communication with Mr. Radom. Every court hearing -- I should say virtually every court hearing Mr. Radom was in New York and invariably was at my office before or after such hearing, and eventually Mr. Schaeffer and Mr. Vogel were retained by Mr. Radom and the fund and they appeared in the proceeding, and they appeared and met in my offices, too.

Q Did you meet with any other representatives of the fund regularly during the pendency of the Chapter XI proceeding?

A Came to New York?

Q Came to New York or were communicated with by telephone.

A I spoke to Mr. Teitlebaum up to a certain period of time, I can't recall just when that ended, but I continued my conversations with him up to a certain period of time, and I recall that Mr. Matheson came to New York and I had, I believe, two meetings, one in my office, I believe, and one either in the Neisco office or up in Mr. Rugendorf's office.

Q Were there any persons who maintained offices in New York to whom you were directed for conversations in connection with the Neisco matter by the fund itself?

A Yes.

Q First of all, who on behalf of the fund directed you to communicate with them, whoever they may be?

A I was told and Mr. Horvath was told by --

MR. SCHWARTZ: I object to what Mr. Horvath was told.

THE COURT: Yes, I will disregard that.

A In my present.

MR. KNIGIN: He said Mr. Horvath was told with him in his presence.

THE COURT: Let's hear what you were told.

Q What were you told?

A During this meeting on November the 5th, or November the 19th -- November the 19th, we were both told by Mr. Dorfman and Mr. Matheson, and I believe by Mr. Teitlebaum -- Mr. Teitlebaum, too, that the fund would have an overseer in New York, one of their agents in New York would oversee the entire operation of Neisco to make sure that the fund's interests were properly protected and the fund's money was properly protected.

In addition to that, as they required in the court order that I mentioned before about the loaning of the money, they would require a countersignator, and they told us they would advise us who those two people would be.

I don't recall whether we were told on the 19th or a few days subsequently, but we were eventually told that those two persons were -- do you want to know?

Q Tell us.

A Mr. Sol Eisenrod.

Q E-i-s-e-n-r-o-d.

A And Mr. Rugendorf.

Q R-u-g-e-n-d-o-r-f.

A I don't know Mr. Rugendorf's first name. I don't recall. Mr. Rugendorf was countersigning all checks.

Q Where was Mr. Rugendorf's office located, in what city?

A New York City.

Q Where was Mr. Eisenrod's office located?

A New York City. They had offices together.

Q During the course of the Chapter XI proceeding, did you have occasion to meet or communicate with Mr. Rugendorf and Mr. Eisenrod?

A Very often.

Q Could you tell us, let's take first Mr. Rugendorf, what was the general nature, the general scope, not the specific incidents, of your discussions when you would speak with Mr. Rugendorf, what would he tell you?

A Well, sometimes Mr. Rugendorf was a little slow about countersigning checks. At the beginning he took it upon himself to sign checks alone without an office of Neisco and I had to call to his attention that he was violating a court order, that he could only countersign checks but an officer had to sign them and he should countersign them.

Questions were constantly being discussed about the operation and the overhead, cutting down the overhead, cutting down the cost of expenses.

Q Who was taking an active role in cutting the overhead, who was that?

A Mr. Rugendorf.

Q Go ahead. Anything else?

A On behalf of the fund?

Q Yes, on behalf of the fund, is that what you said?

A Yes.

MR. SCHWARTZ: Your Honor, this is a pure conclusion on behalf of the fund, and in any case, I don't think counsel ought to lead the witness. It's the same thing again.

THE COURT: Focus on just what it was that Mr. Rugendorf was doing.

MR. KNIGIN: Your Honor, I just want to make the point so there will be no surprise that this goes to the very, very heart of the issue that's been raised by the defendants concerning the jurisdiction of this court, and I want to make this point that this is not something we are adding for any type of window dressing purpose.

THE COURT: It is a question of who can properly make the point under the rules of evidence, and it has to be testimony from the witness.

MR. KNIGIN: I agree with your Honor. Thank you.

Q Now, I think I interrupted you when you said that Mr. Rugendorf was -- the last thing you said, Mr. Ballon, was that he was taking care of the cutting of overhead.

A On behalf of the fund. I think Mr. Ernest Horvath was doing it in connection on behalf of Neisco.

Q Was Mr. Rugendorf being paid by Neisco Inc.?

MR. SCHWARTZ: I object to the question. If the witness knows.

MR. KNIGIN: I wouldn't ask him if he didn't.

THE COURT: Ask him if he knows who was compensating Mr. Rugendorf?

Q Do you know who was compensating Mr. Rugendorf?

A To the best of my knowledge, the pension fund was compensating Mr. Rugendorf.

Q Was he --

A There was no court order providing for the Neisco to compensate Mr. Rugendorf. I assume he was not working for nothing.

MR. SCHWARTZ: I move to strike out the answer. It is pure hearsay.

THE COURT: It rises a bit morethan hearsay. He has given his impressions.

MR. SCHWARTZ: This testimony really had nothing to do with the liability or the services. It is primarily, I assume, on the question of jurisdiction to show that the fund was doing business here.

THE COURT: That is an objection which goes to relevance, and that is a little harder for me to evaluate, Mr. Schwartz. But I suppose that during the pendency of the Chapter XI proceeding the presence and control and interrelationship of the plaintiff firm and acknowledged representatives of the fund may be of some relevance in the overall picture.

MR. SCHWARTZ: Well, it's of relevance, obviously, to a certain extent, but it's also important as to whether Rugendorf was an employee of the fund, whether he was an independent contractor -- the relationship. The fact that the fund employed someone on the spot to protect its interest against diversion of assets does not make it doing business here.

We can argue that. That is a question that your Ho-or will have to decide as a question of law.

At the same time, I don't think we ought to fudge up a legal question by having just vague conclusions as to exactly what Rugendorf's relationship was. If that is important we should have specific testimony as to exactly what it was.

THE COURT: I will permit this witness to testify as to his own knowledge, however limited it may be, as to Mr. Rugendorf's status in life.

He remains in my mind still a somewhat shadowy figure, but Mr. Ballon can describe the extent of his own knowledge as to Mr. Rugendorf.

Q Is there any other information that you can provide us with concerning the general scope of your relationship with Mr. Rugendorf during the course of the Chapter XI proceeding?

A I have had conversations with Mr. Rugendorf during the course of this because I saw him very frequently, and I became very close, and he told me that he was the New York representative on various matters for the pension fund and handled all this type of situation, such as overseeing matters and giving them advice -- his business was that of a financial consultant, and he acted as such for the fund, he told me, generally, in the New York area. His office was in New York.

Q How many times during the course of the Chapter XI proceeding did you meet or communicate with Mr. Rugendorf, approximately?

A 20, 25 times.

Q How many times that you met with Mr. Rugendorf were other representatives of the fund also present with the two of you?

A Probably with Mr. Radom maybe half dozen times or more.

With Mr. Matheson, I believe, and with Mr. Duffey -- Mr. Matheson, I think, twice. With Mr. Duffey possibly only once. With Mr. Eisenrod, I would say six or eight times.

Q During these meetings that took place in your presence with Mr. Rugendorf and representatives of the fund, did you ever hear Mr. Rugendorf make statements concerning the overall Neisco picture to the others there assembled?

THE COURT: Would you read the question, please.

(Record read)

MR. SCHWARTZ: May I object to Mr. Rugendorf's statement at that time. Until there is a connection between Mr. Rugendorf and his capacity to make the statement I think the testimony would be hearsay.

MR. KNIGIN: I will withdraw the question. There seems to be a problem even with my own witness about it.

Q When you met with these people, the representatives of the fund, and Mr. Rugendorf, did you discuss Neisco?

A We discussed what?

Q Neisco.

A Oh, yes, of course.

Q Did Mr. Rugendorf have anything to say from time to time?

A Oh, there were constant conversations about the operations -- if I recall, at one point he was extremely pleased bythe fact that on the basis of Mr. Weisser's projections they were supposed to lose a certain amount of money on the first month of operation, and it turned out that they lost much less.

Q Who said that?

A Mr. Rugendorf.

Q Go ahead.

A And he was very pleased with thatpart. I remember that isolated instance, but there were constant conversations about the operation and the sales and cutting the overhead, and there were discussions with the controller, with reference to the necessity for buying goods ahead of time, raw materials ahead of time and producing the product ahead of time and having it in inventory.

Mr. Rugendorf wanted to keep the inventory down -- that type of conversation, yes, I heard that type of conversation.

Q Was Mr. Rugendorf telling the others assembled, or were they telling him this information? Who was telling it to whom?

A Mr. Rugendorf was telling it to -- for example, to Mr. Matheson, you mean?

Q Yes.

A He was telling it to Mr. Matheson. He was reporting to him.

Q Who else?

A He would also report to Mr. Radom; he was also reporting -- it would be a sort of joint conversation with Mr. Eisenrod, because he and Mr. Eisenrod were together allthe time, and they were both jointly involved in the supervision of this entire operation on behalf of the fund.

Q At any time during the course of these conversations, did Mr. Matheson or Mr. Radom say to Mr. Rugendorf anything in connection with his reporting?

A I don't recall anything said in my presence, no. They just accepted his report and then they would probably -- not they probably, but they went into private session with Mr. Rugendorf.

Q What about Mr. Eisenrod's role, what was the general nature of that role as you saw it occur?

A Mr. Eisenrod had a very, very close relationship with the trustees of the pension fund. As a matter of fact, he was a big borrower from them at the time and they had a great deal of confidence in him and in his business judgment, and they wanted him to be the supervisor -- he was the business supervisor of this operation.

In due course, during the course of the Chapter XI proceeding, that evolved into an entirely different situation, to this extent: That Mr. Eisenrod had entered into an agreement with the fund whereby he was going to buy the Neisco Corporation and take it over and assume the indebtedness to the fund.

He told me that he would have a reduced indebtedness -- but I don't recall the exact conversation--

but he was going to take over the entire thing with the fund's blessing and he was going to operate the Neisco operation.

THE COURT: Mr. Knigin, I think we will break for lunch now. Off the record.

(Discussion off the record)

THE COURT: We will resume again at 2 o'clock.

(Luncheon recess)

pm 9/22
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Duffey
Haight

AFTERNOON SESSION

(In open court, jury present)

FREDERICK BALLON, resumed:

DIRECT EXAMINATION (continued)

BY MR. KNIGIN:

THE COURT: Proceed, Mr. Knigin.

MR. KNIGIN: Thank you.

Q Now, Mr. Ballon, just before we recessed we were discussing Mr. Eisenrod.

Could you tell us what functions Mr. Eisenrod performed during the course of the Chapter XI proceeding?

A Mr. Eisenrod performed what?

Q During the course of the Chapter XI proceeding.

A Mr. Eisenrod was supervising the entire operation from the business viewpoint. He was acting on behalf of the fund in the sense of watching the business operation, watching the amount of sales, watching how they were producing goods, whether it was a proper operation from the point of view as a businessman as such.

Q Was Mr. Eisenrod performing that function on behalf of anybody?

A He did that on behalf of the fund.

THE COURT: Mr. Ballon, what was the nature of the Neisco business, what were they selling?

THE WITNESS: They were weaving textile fabrics.

Q Where was Mr. Eisenrod's office?

A Mr. Eisenrod's office was on Madison Avenue. They shared offices, Mr. Rugendorf and Mr. Eisenrod, shared offices. Who was the primary tenant, I don't know, but they were both in the same office.

Q Also during the course of the Chapter XI proceeding, in fact, immediately prior thereto --

A I can't hear you.

Q During the course of the Chapter XI proceeding and, in fact, even prior to it, did you have occasion to meet in New York City with representatives of the fund, other than Mr. Rugendorf and Mr. Eisenrod, and Mr. Radom?

MR. SCHWARTZ: I think the witness has testified to all that and given us a list of the people he met and how many times he met them: Mr. Matheson, Mr. Duffey --

THE COURT: Yes, Mr. Radom about six times, and so forth.

MR. KNIGIN: I will withdraw the question, your Honor.

Q Now, Mr. Ballon, did Ballon Stoll & Itzler then begin to do the things that were required of them to be done in connection with the Chapter XI proceeding?

A Yes, we did the usual normal things in a Chapter

XI proceeding. We filed the Chapter XI petition, obtained an order staying all suits and actions against it, an order continuing the debtor in possession, an order retaining our firm as attorneys, and an order extending the time to file schedules.

In due course I believe we obtained another order extending the time further to file schedules.

In due time we did prepare and file schedules with the information undoubtedly given to us by the Neisco bookkeeping department.

Thereafter, we called and convened a meeting of the general unsecured creditors which was held in some hotel room, I don't recall which, on December 10th.

At that meeting I addressed the body of creditors, told them the situation, and advised them of the fact that the pension fund had a lien on all the assets and advised them of the numbers involved, including the balance sheet, and the assets and the liabilities.

THE COURT: What did you give as the date of that meeting, sir?

THE WITNESS: December 10, 1969.

A After I finished my advice to the creditor parties, I was asked a number of questions and then we were excused from the room.

Upon returning to the room we were advised that a committee of creditors had been formed and that that committee had retained counsel, to wit, a firm by the name of Leinwand, Maron, Hendler--and Krause I think is a member of the firm. They were acting as counsel for the creditors committee.

They advised me further they had not retained anybody as secretary to the committee and they would go along with Wasserman & Taten and accept their reports.

Thereafter we did the usual things in the Chapter XI proceeding such as filing monthly reports as to cash receipts and disbursements. We kept the Neisco bookkeeping department advised by having them open a new set of books from the date of the filing of Chapter XI. We had them open up new bank accounts with signators on it, and Mr. Rugendorf as a countersignator.

We then proceeded with the other mechanics involved, such as objections to claims and then we started negotiating and had meetings with the committee and its counsel, and started to negotiate a plan.

MR. SCHWARTZ: I wonder, your Honor, whether this wouldn't all be relevant to the second trial on the value of the services, including the detail of the services performed. I don't think any of this bears on liability.

MR. KNIGIN: Your Honor, I would have no objection withholding this portion of the testimony, if it be conceded by counsel that Ballon, Stoll & Itzler performed all of the functions that were required of it by terms of the contract that is claimed between Ballon, Stoll & Itzler and the fund.

That's the only reason I'm offering this by Mr. Ballon, that there be no claim that we didn't perform our services.

MR. SCHWARTZ: We will concede not that there was a contract, but we will concede that Ballon, Stoll & Itzler represented Neisco and did all the usual procedures that are required in a Chapter XI proceeding on behalf of the debtor in that proceeding.

THE COURT: That may be sufficient for you, Mr. Knigin. You can't fairly expect him to stipulate to the existence of the contract when he denies it.

MR. KNIGIN: I'm only saying the basis of the of offer, your Honor.

THE COURT: Surely.

MR. KNIGIN: Thank you, your Honor.

Thank you, Mr. Schwartz.

Q Now, Mr. Ballon, did there come a point in time when you were able to prepare for consideration by the creditors a plan in Chapter XI for Neisco?

A Yes. I reached a certain point in my negotiations with the creditors committee, and at that point the creditors committee was split. The largest creditor on the committee wanted a larger sum of money whereas I could convince the rest of the committee to go along with the proposal that I had made.

By that time I had gotten down to about 12-1/2%, not about, exactly 12-1/2% instead of the 15% that I had originally contemplated.

This particular creditor wanted substantially more, and he had a meeting which was attended by Mr. Radom at which I suggested that we have some alternatives,and I made the suggestion that we could possibly buy the claim, the pension fund company buy the claim of this largest creditor, or we could amend the plan and try to make a larger offer.

Mr. Radom told me he didn't want to do that, at least at the end of the meeting--I think that meeting was attended at that time by Mr. Radom and his partner, or his then partner, at any rate, Mr. Melman, and I think Mr. Matheson was there, too, Mr. Eisenrod, and Mr. Rugendorf--I don't remember whether Mr. Duffey was there or not.

Anyway, it was finally -- I was finally

instructed by the pension fund people, through Mr. Radom, that they didn't want to buy the claim of this creditor. I think it was American Viscose. They told me to stick to my guns and to go ahead on a plan of 12-1/2% to general unsecured creditors.

We then met with the committee again and on a split vote we got a complete approval on the 12-1/2% plan.

We prepared such a plan, filed that plan, and then proceeded to obtain the requisite consents to that plan which would be in excess of 51% in amount and number of creditors.

Q Did there come a time when you in fact obtained the requisite number of consents and filed them in this court?

A Yes, we did.

Q Did you also work out a resolution of the IRS claim?

A Yes, we had much difficulty with that.

The claim of the IoS, as I remember it, was about $450,000 or maybe it was close to $500,000, I don't recall the exact figure, and they didn't want to go along with the plan at the time, and the young lady who was the U. S. Attorney in charge of the matter at the time necessitated a great many hearings, and finally when we had reached agreement with her, it then had to go down to Washington for approval in Washington.

We then went down to Washington -- I don't recall who went down, but somebody went down to Washington from the fund, too, if I recall correctly --

Q What was the net result of that?

A I didn't go down, but Mr. Itzler went down. He was accompanied either by Mr. Vogel or possibly Mr. Schaeffer, and he went down and they finally worked out a deal and they did send through this approval from Washington and we got the consent and approval from IRS that they would accept an amount equal to the same amount that was needed to pay the general unsecured creditors, and I believe it was a four or four-and-a-half year payout plan for the balance of the claim.

Q Now, Mr. Ballon, do you recall earlier this morning you said that you-- in your first or second meeting with representatives of the fund you discussed what it would cost to fund the entire Chapter XI proceeding; as a matter of fact, after receiving the consents that you did in relation to the arrangements that you had worked out for the plan, could you tell us how the sum that would have had to have been advanced to satisfy that plan related to your first suggestions to the fund?

A It was considerably less.

MR. SCHWARTZ: Your Honor, I object to this conclusory testimony.

THE WITNESS: I'm sorry, I didn't know you were going to object.

MR. SCHWARTZ: If there were specific arrangements with the government, we should have them. I assume they are in writing. If there are specific arrangements with the creditors, we should have them, consents. We can do our own arithmetic.

This method of generally testifying that he accomplished everything is at variance with our concept of the facts, and I'd rather have the precise facts established in a proper way.

THE COURT: Is this the sort of factual dispute which is material on liability or does it --

MR. SCHWARTZ: It is. Because it will show that the actual cost was much higher than was authorized.

THE COURT: What the witness is being asked to do is to state a total and then I suppose it could be broken down into component parts.

I would prefer to have the component parts first.

MR. SCHWARTZ: As I say, we can do our own arithmetic and total it up.

THE COURT: That is preferable.

MR. KNIGIN: The actual documents that Mr. Schwartz has made reference to are part of those documents which comprise the bankruptcy file in this court.

Let me see if I can perhaps--

MR. SCHWARTZ: I didn't hear you.

You say you presented them to me?

MR. KNIGIN: They are in the bankruptcy court.

MR. SCHWARTZ: Mr. Knigin gave me the list of the dates of hearings that he intends to read excerpts from, but I don't know what the excerpts are or what pages or anything else like that.

MR. KNIGIN: Mr. Schwartz is now confusing two things, your Honor. I did, during the recess, at your Honor's suggestion, provide Mr. Schwartz with the dates of the hearings that I intend to read excerpts from. But I am now talking about the fact that Mr. Schwartz indicated in voicing his most recent objection that he wanted to see the documentation which indicated the agreement with the government.

The documentation which indicated the consent of 51% of the creditors, unsecured creditors to the plan, well, that documentation, Mr. Schwartz, is also part of the bankruptcy file and I just wanted to call his attention to that.

THE COURT: What we are focusing on now, as I understand it, is the precise financial amounts involved in each of the resolutions which made up the overall plan, is that right?

MR. SCHWARTZ: Yes.

THE COURT: Let's see if we can get at that.

BY MR. KNIGIN:

Q Mr. Ballon, you recall earlier this morning in your testimony you indicated that you had told the fund members early on, almost the first or second meeting, that the claims of the general unsecured creditors, you thought, could be satisfied for about 12-1/2 to 15%,and you estimated that to be somewhere in the neighborhood of $60,000 to $75,000.

In point of fact, would you tell us, on the plan as ultimately promulgated, how much was to be paid to the general unsecured creditors?

A I think I remember that figure precisely, I think it was $26,000.

Q You may recall that earlier you said that you would have to pay to the government as a down payment whatever the amount was that you were going to pay to the general unsecured creditors.

What was the amount that the government had agreed to take?

A I believe it was the same amount, the same $26,000 or approximately that amount.

MR. SCHWARTZ: I make the same objection. He thinks. I'm sure there was a letter or a written document from the government. We ought to see what that says.

MR. KNIGIN: Your Honor, the court records indicate that--

MR. SCHWARTZ: Let's get the court records here if that is the case.

MR. KNIGIN: His Honor is aware of the fact that we had asked that they be directed here, but I understand that they are too cumbersome to transport the entire thing. Perhaps during the next recess, your Honor, if Mr. Schwartz will accompany me, we will have to extract that portion of the record that relates to the tax claim if he doesn't have a similar recollection as Mr. Ballon.

THE COURT: The files are voluminous. It will be possible, I hope, to isolate those portions of the file that become material.

MR. SCHWARTZ: I have a vague recollection, because I was not intimately involved in the negotiations, but the government claimed it was settled on the down payment of $120,000, plus a guarantee by the fund of half of the total to be paid in the future, which was another $225,000.

It is completely at variance with what the witness' recollection is.

THE COURT: If there is a dispute on these various component parts and the dispute is material, it will have to be resolved by evidence of one kind or another.

MR. SCHWARTZ: I understand that was all reflected in correspondence between Neisco and the government. This can all be established by documents without any guesswork or misrecollection.

THE COURT: Counsel may have to examine the bankruptcy files during a recess and pursue the question.

On the present state of the record the witness says that his recollection in respect of the payment to general unsecured creditors is precise, and that is $26,000, and he believes that the cash payment to the IRS was in the same amount, and I gather that is in dispute.

THE WITNESS: I personally -- I'm sorry.

MR. SCHWARTZ: The government tax claims, as shown here, this is an extract of the minutes of the fund where the matter was presented to them for consideration -- the amount was $450,000 paid over a period of seven years.

The terms of payment required $100,000 on confirmation, annual installments thereafter of $50,000 each, deferred installments bearing interest. The Internal Revenue Service will not consent to the deferred payment program unless the fund guarantees $275,500, 50% of the principal.

That is quite at variance with the witness' recollection.

THE COURT: It certainly should be possible to stipulate these facts. We are talking about, after all, a promulgated plan. There can't be any doubt about what the plan was.

MR. SCHWARTZ: There wasn't a promulgated plan. The witness produced a promulgated plan here which the witness produced on his deposition, and at the appropriate time I will offer it in evidence, but it says nothing about any of these details that can come to any figure.

I also note here that at this time the payment to the creditors was 12-1/2% as stated, but the amount expended would be $75,000 and not $26,000.

These are all written items which should be present.

THE COURT: It should be -- counsel should be able to stipulate on questions of this nature.

MR. SCHWARTZ: That is right.

THE COURT: We will have to wait on that, Mr. Knigin. You can go on with another subject if you can do that without doing violence to your presentation.

MR. KNIGIN: I will, your Honor.

Q Mr. Ballon, what about the administration expenses, did there ultimately come a claim from the attorneys for the creditors?

A The attorneys for the creditors committee had agreed with me informally that if it were third party money they would be willing to accept $25,000.

Q Was there any court charges?

A They were insignificant. The total costs would have been under $5000,as I recall.

Q Were there any secretarial charges?

A There was no secretary. It was just a referee's fund and stenographer's bills. I think most of the stenographer's bills were paid during the course of the proceeding.

Q What was the fee of Ballon, Stoll & Itzler, the attorney for the debtor?

A The fee would have been the same as originally agreed upon with the fund, which was $100,000 all over,

$25,000 of which had been received, leaving a balance due of $75,000.

Q Did there come a time when this plan was presented to the Court?

A The plan was filed in the court and thereafter consents to the plan were obtained from the creditors in the requisite amounts, in excess of 51%, both number and amount of creditors.

Q Did there come a time when the requisite number of consents were obtained?

A Yes.

MR. SCHWARTZ: May we have the date the plan was filed with the Court?

Q Do you know, Mr. Ballon?

A I can't hear what he said.

Q He wants to know, do you have the date when the plan was filed?

A No.

Q Do you have it, Mr. Ballon?

A No, I don't have it.

MR. SCHWARTZ: May we have a copy of the plan identified by the witness that he is referring to?

MR. KNIGIN: I think we have already given you a copy of it, Mr. Schwartz.

MR. SCHWARTZ: I know, but I'd like to have it identified. I would assume you would have this. No?

MR. KNIGIN: You assume incorrectly. If you give me your copy, I'll be happy to have it identified.

MR. SCHWARTZ: My only problem is that I don't have an extra copy for my own use.

MR. KNIGIN: It is only for identification. I'll be pleased to return it to you the moment it is identified.

Q Mr. Ballon, I show you this document and ask you whether or not this is the plan that was promulgated in connection with the Neisco Chapter XI proceeding?

A Yes.

MR. KNIGIN: May it be marked for identification, please.

xx (Plaintiff's Exhibit No. 2 marked for identification)

MR. KNIGIN: Does your Honor care to look at it?

THE COURT: Yes. I have been waiting for it to appear and now it is here.

MR. SCHWARTZ: May the record show, your Honor, that that document was marked Defendant's Exhibit O on the deposition of Mr. Ballon before trial. I'm sorry, the deposition of Mr. Izler before trial.

MR. KNIGIN: May I return it to Mr. Schwartz, your Honor, for safekeeping?

THE COURT: Surely.

MR. KNIGIN: Mr. Schwartz, you may be the holder of that document. Thank you.

Q Now, Mr. Ballon --

THE COURT: Have we cleared up Mr. Schwartz' question as to the date of filing? Does that appear from that document?

MR. SCHWARTZ: The document is dated April 15. I don't know when it was filed.

MR. KNIGIN: April 15, 1970.

MR. SCHWARTZ: 1970, yes. Perhaps the witness knows when it was filed.

MR. KNIGIN: Again, your Honor, the court docket indicates when it was filed. I may have a copy of the court docket here, at least through September of 1970, so if the date becomes a matter of crisis, I'm certain I can extrapolate it.

Q Now, Mr. Ballon, after the required consents were obtained, what happened then?

A Negotiations went on with the government. They were very protracted and we had to keep appearing in court and the first meeting was adjourned from time to time pending the resolution of the government claim.

Q Mr. Ballon, by the way, these specific proceedings, around the period of time that we are now discussing, was that conducted by you-- were they conducted by you?

A The proceedings with reference to the claims?

Q Yes.

A No.

Q Was it --

A Mr. Itzler conducted them.

Q Were the negotiations with the Internal Revenue handled by you?

A No.

Q Was the actual handling of the collection of the consents handled by you?

A No.

Q Was the obtaining of the approval of the Court to the plan, if there would be such an approval, handled by you?

A I appeared in court some time-- most of the times Mr. Itzler appeared in court.

Q Under whose general supervision was all of this portion of the work?

A The mechanical portion of the work?

Q Yes.

A That was done under Mr. Itzler.

Q Now, dd there come a point in time when the plan was ready for initiation, that is to say, to be put into effect?

A Yes, there came a point in time when the creditors had their consents and they were ready to file them, 51% in amount of numbers, and the government's stipulation had been entered into and was presented for the Court, or was already in the courtroom, was ready to be presented to the court.

MR. SCHWARTZ: Let me have that date. May we have that date?

MR. KNIGIN: I don't know.

MR. SCHWARTZ: Would you ask the witness?

Q Do you know the date, Mr. Ballon?

A No, I don't.

MR. KNIGIN: For the record, your Honor, I think that Mr. Schwartz is aware of the fact, because he and I have discussed it just before lunch, that the critical date is September 2, 1971. I'm sure that he will recall that date. We discussed it.

MR. SCHWARTZ: Well, there are many critical dates, your Honor, but that has nothing to do with the question as to when a certain plan was filed or approved or consents obtained.

I know that as late as February 1972 they had not been filed.

THE COURT: I don't know what is critical and what is not.

MR. SCHWARTZ: That is the reason why I'd like the witness to fix a date. I think it would be preferable if the witness did not testify to all of these procedures which he had nothing to do with. Mr. Itzler had to do with them.

THE COURT: He has been asked about if he knew the date of the filing of the plan and he said he doesn't know.

BY MR. KNIGIN:

Q Now, Mr. Ballon, at that-- did there come a time in and about September of 1972 when something occurred in relation to the plan and the fund's reaction to it?

THE COURT: What time did you say?

MR. KNIGIN: September 2, 1971.

THE WITNESS: September 2, 1971?

Q Yes.

A Yes. A statement was made in open court that the fund had decided not to fund the plan.

bs:mg 22 Ballon-direct

MR. SCHWARTZ: May I ask the Court to request the witness to say whether he as there or was not there?

MR. KNIGIN: Your Honor, this is all matter for cross-examination.

I think if counsel wants to determine-- wants to attack the witness' credibility, I don't think he should do it with objections on each question.

The witness is testifying to what he knows.

MR. SCHWARTZ: If he wasn't there, it is purely hearsay. I don't want the witness to testify to what he doesn't know. We have transcripts of the hearing. That will be fine. Otherwise who was there should testify as to what took place.

THE COURT: For the most part, cross-examination should wait, but if it is based upon a possible hearsay objection as to whether or not the witness was there, I suppose it is appropriate to inquire if he was there.

Why don't you do that, Mr. Knigin?

BY MR. KNIGIN:

Q Were you there, Mr. Ballon?

A I don't recall. I don't know whether I was there or whether I read the minutes of the hearing.

MR. KNIGIN: Your Honor, I will withdraw the question.

Q Mr. Ballon, I show you this letter dated March 13, 1972 addressed to Mr. Ronald Itzler at the office of Ballon, Stoll & Itzler, from the firm of Schaeffer, Dale & Vogel, and I think there are some other names there,and ask you whether or not you have seen that letter before.

A You asked me what?

Q Have you ever seen that letter before?

A Yes.

Q Is this letter an original of a letter that has been retained in the files of this proceeding at the offices of Ballon, Stoll & Itzler?

A Yes.

Q Have you read the contents of the letter?

A Yes, I have.

Q Mr. Ballon, on the date that that letter was received by your office, was that the first time that you had knowledge of the subject matter set forth in that letter?

THE WITNESS: Your Honor, the only way I can answer that question is if I can inquire as to the date of adjudication. I don't recall the dates and years that well. It is Itzler's letter, March 22, 1971 -- 1972. It is Itzler's letter, correct.

Once before, if I recall correctly, the fund had come to this type of a decision, and they made that statement in open court, and then they thought the matter over-- that was back in 1971.

Q Is that the September 7th one which you spoke about before?

A It must be September 1971.

MR. KNIGIN: At this time, your Honor, we will offer into evidence the letter.

THE WITNESS: This was March 1972 and the matter continued from September to March.

xx (Plaintiff's Exhibit No. 3 marked for identification)

MR. SCHWARTZ: No objection.

THE COURT: Received.

xx (Plaintiff's Exhibit No. 3 received in evidence)

Q Now, Mr. Ballon, I think you just said a moment ago that you had known of this kind of a statement by the fund in September of 1971.

A Yes. That statement was made in open court back in September 1971. I believe it was made by Mr. Radom. In fact, I'm sure it was made by Mr. Radom, and I believe it was also made by Mr. Vogel, and then negotiations started all over again. The matter was --

Q Holding the negotiations a moment, Mr. Ballon.

Up until September of 1971 had anybody on behalf of the fund ever made such a statement?

A No, absolutely not.

Q Was there any change in the arrangements that had been agreed to-- that you testified had been agreed to in the November or December of 1969 through September of 1971 period?

S No.

MR. SCHWARTZ: I object to the question. It is purely calling for a conclusion and counsel is actually testifying.

THE COURT: He is asking if any changes had been made in the arrangements that were negotiated in Chicago in 1969.

MR. SCHWARTZ: That is a conclusion.

THE COURT: What arrangements do you mean?

MR. KNIGIN: The ones that he has testified to, that he would undertake to do the Chapter XI, that there would be a settlement to the creditors of so much, that there would be so much going to the IRS, that so much would be going to the administration costs, that it would be funded by the fund-- was anything said that the fund would-- the fund would produce the dollars.

Was there anything said between those meetings in late 1969 and this court appearance in September of 1971 that in any way altered or changed that understanding?

That is the question.

THE COURT: Well, as stated, I suppose it is conclusory. But you can ask him if during that period of time any such changes came to his knowledge or his attention.

MR. KNIGIN: All right, your Honor, I will rephrase it.

Q Mr. Ballon, during that period of time, from November-December of 1969 through September of 1971,did any changes or modifications or amendments of the understanding reached at the end of 1969 come to your attention?

A Not at all.

Q Were you still the senior partner of Ballon, Stoll & Itzler primarily-- in charge of this case?

A Yes.

Q Other than the fact that the -- I think you said the mechanical work was done by Mr. Itzler?

A That is correct.

Q After September of 1971, between the period September of 1971 and March of 1972, when this letter was received, tell us what happened.

A Negotiations were taking place with reference to the Montmartre Hotel.

MR. SCHWARTZ: Tell us what happened during a several month period is a rather broad question.

If the witness is testifying to his own knowledge, his own contact with people, I think we should have that brought out as such.

If he is merely testifying to a general conclusion of what he was told by his partners or other people, it is pure hearsay and I don't think we ought to have that in evidence.

THE COURT: I can't judge the answer until I hear it. He was in charge of the case and he is being asked what happened in respect of the case during a given period of time.

The question is proper enough. Let's judge the answers as they come.

MR. SCHWARTZ: I would think that what happened over a several month period is a rather broad question and would not be a proper form of question.

THE COURT: I will overrule the objection to the form.

A I don't remember the question any more.

Q The question was: Could you tell us what happened between September of 1971, when the statements were made in open court, and the time that you received this letter in about the middle of March of 1972.

A Continuous negotiations with reference primarily to the Montmartre Hotel and the future of that hotel.

Negotiations with reference to Mr. Eisenrod taking over the ownership through the pension fund of the Neisco operation.

Negotiations with reference to Mr. George Horvath completely withdrawing and resigning from the Neisco operation.

Negotiations with reference to the salary to be paid to Mr. Ernest Horvath during his lifetime as a consultant to the Neisco operation and for salary to be paid to his wife upon his decease.

Further negotiations with reference to the maintenance of an office in New York by Montmartre with a limitation on the expenses of that.

Negotiations with reference to the salary that Mr. George Horvath would draw out of Montmartre.

Negotiations with reference to the purchase of an adjoining parcel of land in connection with plans that had been underway at the time for Mr. Horvath to build a large condominium, tear down the Montmartre Hotel, and build a condominium on that property.

Q Were there any negotiations in relation to the IRS claim against Neisco?

A Fromthe time the stipulation was offered in court, which I think was back in November of 1971, there were no negotiations; there was no necessity for them, the claim was settled.

Q Anything else?

A There are various negotiations with reference to the Montmartre Hotel. I'm trying to give you them as best I can.

There was negotiations with reference to insurance policies. Some time during the course of the proceedings the fund insisted that George and Ernest Horvath turn over complete ownership of policies, I think, aggregating a million dollars on the life of each of them to the fund.

Then negotiations took place whereby the fund was going to give back to George and Ernest Horvath I think $250,000 of each of those policies.

There were multitudinous negotiations along that line and they were trying to resolve the other problems because the Neisco problem was resolved as such.

Q Mr. Ballon, I show you these three letters, two dated January 21, 1970, one dated April 8, 1970, and a fourth one dated April 21, 1972, all addressed to Mr. Joseph Radom, and ask you whether or not you can identify these letters, and who was the writer of them.

A This letter of January 21 is a letter I wrote to Mr. Radom and it concerned itself with the fact that there were some difficulties about the--

MR. SCHWARTZ: If the witness will identify the letter so it can be marked, I will have no objection.

A I sent a copy of the letter to Mr. Teitlebaum.

This other letter was also written on the same day to Mr. Radom. January 21, 1970, that is.

April 8, 1970, this was written to Mr. Radom and copies were sent to Mr. Eisenrod, Mr. Rugendorf and to Mr. Horvath.

April 21, 1970, a copy of this was sent to Mr. Eisenrod. The original was sent to Mr. Radom.

Q Who wrote the letters,Mr. Ballon?

A I wrote each of these letters. I dictated them. I signed them.

Q Were they forwarded to the addressees indicated thereon?

A Yes, they were.

MR. KNIGIN: I offer them in evidence, your Honor. I will offer them for identification.

xx (Plaintiff's Exhibit 4, 5, 6 and 7 marked for identification)

MR. KNIGIN: Your Honor, these are the only documents, I think, and another small group of letters that we will have this problem of not having additional copies for everyone. I am sorry, but it was a decision made very, very late on as to them.

MR. SCHWARTZ: No objection.

xx (Plaintiff's Exhibits 4, 5, 6 and 7 received in evidence)

THE COURT: I note, Mr. Knigin, that the exhibits as marked, the numbers don't follow the dates. I don't know if that is of importance.

MR. KNIGIN: If the Court will accept them on that basis --

THE COURT: Sure. It makes no difference to me.

MR. KNIGIN: Your Honor is right. They must have gotten transposed somewhere along the line.

Thank you, your Honor.

BY MR. KNIGIN:

Q Mr. Ballon, in the several correspondences, Exhibits 4, 5, 6 and 7, did you essentially restate what was your understanding of what you were going to effectuate for Neisco?

A I think most of those letters--

MR. SCHWARTZ: If your Honor please, I think the letters speak for themselves.

THE COURT: They do, but I will accept the witness' answer as to the context of what he intends to convey.

THE WITNESS: Most of the contents of three of those letters, at any rate, dealt with the negotiations and problems dealing with the Montmartre situation and the other peripheral issues rather than the Neisco situation, which was going along perfectly fine and which was resolved, as I said before, in September of 1971.

It was just the question of the fund putting up the money for the --

Q I show you the --

A The fourth letter was with reference to the fact that they had not paid the notes as they matured to me and to the Wasserman & Taten firm.

Q I show you this letter dated March 30, 1970, addressed to Mr. Sol Weisenrod,Madison Avenue. Is that the Mr. Eisenrod that you previously testified about?

A That is correct.

Q Is this a letter that you forwarded to him?

A Yes, I wrote this to Mr. Eisenrod on March 30 and sent a copy to Mr. Radom.

MR. KNIGIN: I offer this for identification.

xx (Plaintiff's Exhibit 8 marked for identification)

MR. SCHWARTZ: No objection.

MR. KNIGIN: I offer it in evidence.

THE COURT: Received.

xx (Plaintiff's Exhibit 8 received in evidence)

Q Mr.Ballon, was a plan ultimately promulgated and was a Chapter-- was the-- was Neisco given a discharge under Chapter XI?

MR. SCHWARTZ: If your Honor please, I don't quite undertand what that means.

THE COURT: I don't either. If you don't, I don't. It sounded like two questions.

MR. SCHWARTZ: Was it either an adjudication in bankruptcy or an approval of the plan of arrangement?

THE COURT: Start again.

MR. KNIGIN: I will withdraw the question.

Q Did there come a time when the Court approved the plan of the Chapter XI for Neisco?

A Yes. A hearing was held on best interests of creditors --

MR. SCHWARTZ: Can we have a yes or no answer, your Honor?

THE COURT: I understood him to say yes, and then proceed with his answer.

Did the witness say "Yes"?

MR. KNIGIN: He said yes and was going on with his answer.

MR. SCHWARTZ: May we stop at that point?

"Yes" is an answer if that is his answer.

MR. KNIGIN: I will ask the next question, your Honor.

Q Would you describe for us the circumstances associated with the Court's approval of that plan?

A After having obtained the requisite consents of creditors, and having obtained the stipulation from the government, the IRS, a hearing on best interests, as it is technically known; in other words, the bankruptcy judge, or the referee, as he was then known, holds a hearing as to whether the plan is in the best interests of creditors and that was successfully held, and then the plan was ready for confirmation.

Thereafter the fund, the defendants, refused to put up, or declined to finance the plan and as a result Neisco was eventually adjudicated a bankrupt.

Q Was there any other reason in your opinion as an expert in this field why Neisco was adjudicated a bankrupt other than the refusal of the fund to advance the money to fund the plan?

MR. SCHWARTZ: I object to the question. I don't think it is a proper question for an expert opinion.

It is a matter of record of what the bankruptcy judge said and what took place at the hearing.

I don't think that this witness is qualified to form an opinion as to why certain things were done in a court proceeding.

THE COURT: I'll take the answer, Mr. Schwartz. He is a bankruptcy expert. He was in charge of this case.

The question is: Why did an adjudication take place?

He can express an opinion.

MR. SCHWARTZ: He wasn't there.

THE COURT: I don't know if he was or not. I will take the answer. It goes to the weight.

You can explore it on cross.

A If the money had been advanced, the plan would have been confirmed, distribution would have been made to creditors and the firm would have been discharged from the Chapter XI proceeding.

MR. KNIGIN: Just a couple of observations, your Honor, through this witness, if I may.

Q Mr. Ballon, I show you this letter dated January 23, 1970, addressed to Mr. Joseph Radom and ask you whether or not you forwarded that letter to Mr. Radom?

A Yes, I did.

MR. KNIGIN: Mark it, please.

xx (Plaintiff's Exhibit No. 9 marked for identification)

MR. KNIGIN: These exhibits now being offered, your Honor, have already been supplied to my adversary as part of a proceeding -- part of the examination -- the discovery proceedings in this matter.

xx (Plaintiff's Exhibit 9 received in evidence)

MR. KNIGIN: May I proceed, your Honor?

THE COURT: Sure.

Q Mr. Ballon, did there come a time in about May of 1972 when you forwarded a bill for the services rendered on behalf of Neisco by Ballon, Stoll & Itzler directly to the fund?

A Yes, sir, I did.

Q I show you this document and ask you if this is the document of the bill so rendered?

A It is a copy of it.

MR. KNIGIN: Mark it for identification, please.

xx (Plaintiff's Exhibit 10 marked for identification)

A The original was sent to the fund.

MR. SCHWARTZ: I object to this as self-serving. This is after the fact, after the adjudication, and it has no probative value of any kind.

THE COURT: It is intended to demonstrate the fact that the plaintiff regarded the circumstances as appropriate for the rendition of a statement to the fund.

I will receive it in evidence.

xx (Plaintiff's Exhibit 10 received in evidence)

MR. SCHWARTZ: May I also object on the ground that there ought to be some proof of mailing if it was mailed. We have no record of it.

Don't laugh, Mr. Knigin, it is not a laughing matter.

MR. KNIGIN: I am somewhat surprised as this bill has been the subject of extensive discovery proceedings. Mr. Schwartz himself promulgated these questions before trial. To say this document appeared mysteriously now is somewhat inappropriate.

MR. SCHWARTZ: I don't say that it was ever received of the plaintiff.

THE COURT: I am not innocent of all the past history of the case. If it is in issue that it was mailed, I suppose you should develop whatever additional evidence this witness may be able to give on the subject.

Q Mr. Ballon, at your direction, did the bookkeeping department of Ballon, Stoll & Itzler prepare Exhibit 10?

A I dictated this letter to the head bookkeeper.

Q Was the bookkper directed by you to do anything with that document?

A To mail it out. To mail the original out.

Q Was it so mailed?

A Yes, it was.

Q Has this been carried as an item of account receivable by the firm of Ballon, Stoll & Itzler upon its books since the date of that mailing?

MR. SCHWARTZ: I object to how they carry it on their books. It is purely self-serving and has nothing to do with the case.

THE COURT: I will sustain that.

MR. KNIGIN: Except, your Honor, that first Mr. Schwartz objects to the fact of whether it existed. Then when offering the proof that it did exist, he now objects to it as being self-serving. Self-serving or not, your Honor, and I will concede that it is, the only issue here is what the attitude and the mind was of this plaintiff, not that they created some sort of a spurious claim at some far-reaching or more distant time but that they did it at the precise moment when it became apparent that the fund was not going to meet its obligations, as already indicated in the record.

THE COURT: Of course it is self-serving, but I'm not keeping it out for that reason.

What we are focusing on now is whether or not it was actually mailed by the plaintiff to the fund.

You have now elicited evidence from which I could draw the inference that it was mailed.

MR.KNIGIN: Thank you, your Honor.

I may say, this is the first time that anybody ever said that it wasn't received.

MR. SCHWARTZ: May I point out that the complaint in this action was-- it is not verified -- it was served the beginning of June of 1972.

MR. KNIGIN: Which is after the date of the bill.

MR. SCHWARTZ: Which is two weeks after the date. They were starting a suit so they sent a bill.

THE COURT: This is argument. Get on with the evidence.

Q Mr. Ballon, during the course of the period 1969 through 1970, did the office of Ballon, Stoll & Itzler have exchanges of correspondence with Mr. Radom, Mr. Rugendorf, and Mr. Carl Schaeffer of the firm of Schaeffer, Dale & Vogel, as representatives of the fund?

A Yes.

Q Did the firm receive letters from those individuals in the same capacity?

A We received letters from some. I don't recall if we received letters from all of them.

Q Did the firm also receive letters addressed between these individuals for which the firm received copies of those correspondences?

A Yes, that did occur.

Q I show you this group of documents comprising eight letters, and ask you whether or not, Mr. Ballon, those letters have been retained for the past years, since they were written, in the official files of this case at the offices of Ballon, Stoll & Itzler, and whether they represent records kept in the ordinary course of business by that firm?

A Yes, I recognize all these letters as coming from our files.

MR. KNIGIN: Would you mark them as one exhibit for identification,please?

xx (Plaintiff's Exhibit 11 marked for identification)

MR. SCHWARTZ: May we mark these separately as they go into evidence, your Honor? I don't know what they are and I may object to some and not to others.

THE COURT: I think my time-saving suggestion was probably inappropriate.

Mark them separately for identification.

MR. KNIGIN: Maybe your Honor would mark them 11A, B, C and so forth. They are really a grouping for one purpose only.

I have just supplied copies of all of those documents to Mr. Vogel, who is assisting Mr. Schwartz.

xx (Plaintiff's Exhibits 11A, 11 B, 11C,11D, 11E, 11F, G, H marked for identification)

MR. SCHWARTZ: There is no objection to Exhibit 11.

THE COURT: 11 is recieved.

xx (Plaintiff's Exhibit 11 received in evidence)

MR. SCHWARTZ: There is objection to 11A through 11D, all of which are letters to Irving Rugendorf, of which we have no knowledge by any other advice, and unless there is proof of mailing-- and I also object on the ground of relevancy. I don't know what bearing they have on liability in this case.

THE COURT: What was the first basis you stated?

MR. SCHWARTZ: The first basis is there is no proof of mailing. These are not letters to us or to Mr. Radom. They are letters to Mr. Rugendorf.

As I say, we have no copies of them and know nothing about them.

The second objection is on relevancy because I don't know what relevance that has to do with the questions before your Honor in this case.

MR. KNIGIN: Your Honor, I would ask that the Court receive them with this caveat, we have already given testimony concerning the relationship between Mr. Rugendorf and the fund.

There will also be additional testimony given by another witness.

Your Honor would, in the event that the-- we are unsuccessful in proving the relationship between Mr. Rugendorf and the fund, then obviously these exhibits could be disregarded. If we are successful, and I believe that that will be the outcome, then of course these become very relevant.

THE COURT: This witness has testified that at a meeting with the people who unquestionably spoke for the fund, he and Mr. Horvath were told -- this was at the November 19 meeting-- that the fund would have overseers in New York to protect the fund's financial interest in this matter and that Mr. Eisenrod and Mr. Rugendorf were identified as those overseers.

So on that state of the record, I will receive the documents, but on the question of proof of mailing, you may wish to put to the witness a comparable line of questions from which an inference could be drawn, Mr. Knigin -- obviously, Mr. Ballon was not charged with the responsibility of licking the stamps himself and going to the Post Office.

MR. KNIGIN: We will concede for the record that they are not certified mail, that they are regular mail.

MR. SCHWARTZ: The testimony from Mr. Ballon earlier was that Eisenrod was overseeing the operation and that Rugendorf was a cosignatory on the checks to see that the money was not diverted from the Neisco purposes.

These deal with all sorts of other matters and I don't know what the purpose of it is. If it is to show that the fund was present in New York, doing business in

New York, because they had someone watching the disbursing of the moneys, I would like to know that on the record.

If it is anything beyond that, then we should have a statement by Mr. Ballon.

MR. KNIGIN: I would be reasonably agreeable to making a statement, if that would make it simpler for Mr. Schwartz.

The allegations have already been made. The witness has already testified, Mr. Eisenrod and Mr. Rugendorf were in fact representatives of the fund in New York City.

As a matter of fact, Mr. Ballon went a step further and said that Mr. Rugendorf told him that that was his role.

Obviously if we are going to presume that the defendants are going to continue to press this defense under Section 301 of the CPLR relating to jurisdiction, that is, whether or not the fund pursued a commercial course of business within the State of New York, then obviously that is going to become an issue. That is one of the issues that I'm sure your Honor will have to make a determination about.

What we are saying is we are offering this documentation in support of Mr. Ballon's testimony to prove that in point of fact Mr. Rugendorf and Mr. Eisenrod had a very, very intimate role in this entire proceeding, that they performed functions for somebody on behalf of Neisco, and that the testimony is going to be, and has been, that that function which they performed was the function of representing the fund for Neisco and actually being involved in a commercial endeavor on behalf of the fund in the State of New York.

That's exactly the reason for the offer.

THE COURT: I will receive it.

xx (Plaintiff's Exhibits No. 11A, B, C, D received in evidence)

MR. SCHWARTZ: There is no objection to 11E.

THE COURT: Received.

xx (Plaintiff's Exhibit E received in evidence)

MR. SCHWARTZ: F, G and H are objected to on the prior grounds for my previous objection to Rugendorf.

THE COURT: Same ruling.

xx (Exhibits 11F, G and H received in evidence)

MR. KNIGIN: You may inquire.

CROSS-EXAMINATION

BY MR. SCHWARTZ:

Q Mr. Ballon, how long have you represented the Horvaths, George and Ernest, prior to 1969?

A Twenty years, twenty-five years.

Q Did you represent them in respect of various companies of theirs, not only Neisco?

A Yes, I did.

Q Neisco was organized when?

A I don't recall the date of organization.

Q If I told you 1967, would that help?

A I'll accept your date.

Q Were the Horvaths involved with various bankruptcies prior to the Neisco --

A I'm sorry, I didn't hear you.

Q Were the Horvaths involved with various bankruptcies, or their corporations, prior to 1969, with other companies?

A No, I don't recall offhand. Except way, way back -- it wasn't a bankruptcy -- when I first made their acquaintance, I called a meeting of creditors for them and made a settlement for them. That goes way, way back, twenty years, twenty-five years, something like that.

Q In connection with the Neisco bankruptcy, and excepting only the question of Ernest Horvath's employment, which came up later, and I will get to that, who were practically all of your dealings with on behalf of the Horvaths?

A George Horvath. Only at one meeting I told you that Mr. Ernest Horvath was there.

Q Can you recall when George Horvath first approached you in 1969 with reference ot their needing more money and going to the fund, prior to the meetings in November that you have testified about before?

A Probably a few days before.

Q Did you have any discussion with him as to procedures?

A I couldn't recall as to procedure.

He probably-- I shouldn't say that. He may have mentioned something to me at the time taht the fund wanted a Chapter XI. He probably wanted to explain -- he probably wanted it explained to him. I have no definite recollection of the subject.

Q Didn't he first approach you with the idea of suing the fund on various charges that he claimed he had been done in by them?

A Suring the fund?

Q Yes.

A I don't recall that. I don't recall.

THE COURT: Mr. Schwartz, if you are going to do some cross-examining on the basis of depositions, if you have the original, you can hand it up to me and I would be grateful.

MR. SCHWARTZ: I don'thave the originals of these.

THE WITNESS: I have it here, your Honor.

MR. SCHWARTZ: Would you please hand that to the Court?

BY MR. SCHWARTZ:

Q Do you recall advising George Horvath that suing the firm would be counterproductive if you want to get money out of them, and that by the time he wound up with a suit, his company might be out of business?

A I'm trying to recall such conversation. I don't recall it. If you can give me something to refresh my recollection, I'll certainly be glad, but I don't recall it.

Q Did you have any discussion with Mr. Horvath about what was involved in a Chapter XI proceeding before you went to Chicago?

A We must have, yes.

Q Can you tell us what you told him and what he asked you?

A Before we went to Chicago?

Q Yes.

A I think we did because I think by that time the fund had already advised them that they wanted a Chapter XI proceedingfiled, and he was very adverse to it. So we probably were discussing it either before or on the trip to Chicago.

Q Hadn't he been discussing the matter with the fund through the entire summer of 1969?

A I couldn't tell you what he was doing during the summer of 1969. I probably was away during the summer anyway.

Q Did you read the depositon of Mr. Matheson in this case?

A No.

Q Were you told that Horvath went to Wisconsin to talk to him about the Neisco situation in the summer of 1969?

A I said I didn't read his deposition.

Q Were you told that by Mr. Itzler?

A I don't recall that. If I was told, I don't recall. As I said, I was away in the summer.

THE COURT: Mr. Schwartz, we will take a brief adjournment at this point. We will take about five minutes.

(Recess)

Q When you got to Chicago, Mr. Ballon, at the first meeting, I think you told us that you were talking not only about Neisco but about Montmartre and other matters?

A What meeting are you talking about? When we were down in Chicago?

Q At the first meeting in Chicago.

A Did we talk about other things besides Neisco?

Q Yes.

A Yes, I said we did.

Q You were talking about Montmartre, the Montmartre Hotel?

A I recall Montmartre, yes.

MR. KNIGIN: Mr. Ballon, let him finish the question, please.

Q Were you talking about Masmo?

A I don't recall whether we discussed Masmo at that meeting or subsequently.

Q Did that come into discussions later as part of the loose ends to be cleaned up between the fund and the Horvaths?

A Eventually, yes.

Q Masmo was what sort of a company, can you tell the Court?

A It was another one of the Horvath companies.

It used to be known as Massachusetts Mohair Plush Co., Inc.

Q Was that also a manufacturing textile company?

A That is. I don't recall whether it still was in 1969 or not.

Q Were there also some questions that you discussed at that meeting about a lease in New York of the Neisco office?

A Either that meeting or the next meeting.

Q Was there also a discussion about putting Masmo into bankruptcy and the fund paying out a certain asset that it had which it would sell back to the Horvaths?

A I don't believe it took place at those meetings. I think it took place subsequently.

Q Did that come up later?

A Yes.

Q I think you testified before, and I have this quoted so I think I'm reading your testimony, that you discussed these matters, I think you mentioned Montmartre particularly, and that all these problems had to be resolved to go ahead with the Neisco loan.

Do you recall that testimony?

A Something like that, yes.

Q As a matter of fact, what the fund wanted to accomplish was to sort of straighten out its affairs with the Horvaths and clean them all up, isn't that the gist of that meeting, what it was all about?

A No.

Q Did you later have some correspondence with Mr. Radom and Mr. Eisenrod about settling all these various outstanding claims?

A About doing what?

MR. SCHWARTZ: Would you read the question?

(Question read)

THE WITNESS: Yes, during the course of the proceeding various other matters came up, and we exchanged letters and attempted to negotiate a resolution of other problems.

I think some of those letters are in evidence.

Q In your letter to Mr. Eisenrod of March 30th, 1970, Plaintiff's Exhibit 8, you use this language in the first paragraph:

"Pursuant to talks had between you and Mr. George A. Horvath, the following proposal is made as a possible vehicle to be used to dispose of all existing problems..."

A I'm sorry to interrupt you. May I have a copy of the letter so I can follow you?

MR. SCHWARTZ: Do you have a copy of the letter which you can hand the witness?

MR. KNIGIN: All the exhibits are right here.

Q The first sentence of the letter.

A Yes.

Q That letter outlined a general settlement of all of the Horvath problems with the fund and is divided into six numbered subdivisions.

A Yes. That would include all the problems as well as the Neisco problem. The Neisco problem is taken care of in paragraph No. 1. Separate and distinct --

Q Was this letter written with the idea---

A I'm sorry?

Q Didn't all these problems hang together, that the fund wanted to dispose of all of them as a complete settlement with the Horvaths, not one by one piecemeal?

A No.

Q I show you a letter of April 8, 1970, Plaintiff's Exhibit 5. That is a letter you wrote to Mr. Radom, I understand.

A Yes.

Q In the first paragraph of that letter you write, "Since the counterproposals at the meeting in our office were not completely satisfactory to Messrs. Horvath, pursuant to the suggestion of Mr. Eisenrod, I am incorporating herewith a proposal which I truly think should be satisfactory to all parties involved."

And then you list in this letter about seven numbered paragraphs of different items to be disposed of, of which Neisco is only one?

A Again Neisco is No.1.

Q Wasn't this an overall proposal to settle all the outstanding claims between the Horvaths and the fund?

A I'm sorry, I don't understand your question.

Q When you wrote this letter to the-- to Mr. Radom, as the attorney for the fund, was this not a proposal to settle all of the outstanding problems between the Horvaths and the fund as a package?

A As I previously testified, the Neisco situation was no problem because point No. 1 was never in question.

The other questions arose during the course of the Chapter XI proceeding and had nothing whatsoever to do with the Neisco situation, and were separate and apart from that, and it was an attempt being made to resolve other problems during the course of this that were not connected in any way.

Q Look at item 3 of this letter.

A What paragraph?

Q Item 3. Where you state: "The fund would enter into an agreement whereby it would employ Ernest as a consultant in its technical operations, the term of which agreement would be for his lifetime, and the salary to be paid to him would be $52,000 per annum payable in weekly installments."

Didn't that have reference to Neisco?

A Any importance to Neisco?

Q Did not that refer to Neisco?

A No, that would give no importance to Neisco whatsoever.

Q Wasn't Ernest supposed to be employed as a consultant by Neisco on the salary basis for life?

A He would be employed by whomever the fund would arrange for him to be employed by. By this time the fund was already negotiating with Mr. Eisenrod to take over the entire operation.

Q Do you know that Ernest Horvath sued the fund for an alleged breach of contract to employ him for life, that is, to have Neisco employ him for life --

A Do I know that?

Q Yes.

A I learned it I think yesterday.

Q Did you ever see a consultant's agreement that was drawn for the employment of Ernest?

A I don't recall seeing any.

Q Did the fund have any textile operations involved with the Horvaths other than the Neisco Company and the Masmo Company?

A Did the fund have any textile operations?

Q Yes.

A I don't know anything about the fund's textile operations.

Q What did you have in mind when you wrote Paragraph 3 that the fund would enter into an agreement to employ Ernest as a consultant in its textile operations?

A Presumably in some of the other plants that it had interests in.

Q Don't you know, Mr. Ballon, that your firm drafted an employment contract for Ernest Horvath by Neisco as a consultant in accordance with the provisions of this paragraph?

A I didn't hear the question.

(Question read)

THE WITNESS: I don't recall. If you tell me so, I will accept your word for it.

Q Weren't you present at the meeting of April 6, 1970, at your -- I think it was April 6 -- whenver it was in April, at your office when such a contract was discussed?

A Not that I recall. There was a meeting at my office on April 6th.

Q Do you recall at a meeting in your office a consultant's agreement for Ernest with Neisco was discussed?

A Where such an agreement was drafted on that day?

Q Was it discussed at that time?

A I don't recall such a discussion.

Q Do you recall any discussion eventually of such an agreement with a pension payable to Ernest's widow after his death?

A Yes.

Q And that was to be an employment agreement by Neisco, was it not?

A No, it was an employment agreement that was to be worked out with the pension fund by whomever they would designate as the employer, you see.

Q Didn't your firm draw an agreement, a draft agreement for Neisco to employ Ernest as a consultant for that purpose?

MR. KNIGIN: Already asked and answered, your

Honor. I object to that question. He said that "If you say that they did," he says, "I'll accept it." He said he didn't have any knowledge of his own.

THE COURT: I will take the answer. It may be repetitive but it may refresh me.

THE WITNESS: I answered before. I don't know. I have no recollection of such. If you tell me it was done, I'll take your word for it.

Q In your letter to Mr. Radom of April 21, 1970, Plaintiff's Exhibit 4, that was written the day after a meeting at your office, I take it from the first paragraph of your letter.

Is that right?

A If I recall correctly, the meeting was at Mr. Eisenrod's office.

Q Eisenrod's office?

A The meeting of April 20 I believe was at Mr. Eisnerod and Mr. Rugendorf's office.

Q You did have a meeting on that date?

A Yes.

Q Who else was present at that meeting?

A We had discussions on that date.

Q. Who else was present besides Eisenrod and yourself?

A Mr. Radom, Mr. Eisenrod, I believe Mr. Rugendorf and myself. I don't know if Mr. Polish was there or not.

Q In that letter in the second paragraph you state, "I have made two changes with reference to two of the items discussed. In view of the circumstances same should be completely agreeable."

Then you follow up in the next paragraph with the items hereinafter recited are satisfactory -- "it is my suggestion that we arrange to incorporate them in an agreement so that we may govern all future actions in accordance therewith, and without any future problems arising between the parties."

Then you go to item 4: "The fund will enter into a consultant employment agreement with Ernest for his lifetime at a salary of $36,000 per annum payable semi-monthly.

"The first of the modifications to our discussions is that Ernest's previous salary at Neisco; namely, $1000 a week was to be continued until the end of the year. This is an absolute prerequisite in order for his family to be enabled to make an adjustment to a reduced scale of living."

Was that agreement drafted?

A I have no recollection of it, if it was.

Q Was that also an employment of Ernest by Neisco as a consultant for life?

A The letter speaks for itself. It says the fund will enter into a consultant agreement with Ernest.

Q Was this letter ever accepted in writing by the fund or anybody on behalf of the fund?

A Was this letter written --

Q Was this letter accepted in writing by anyone on behalf of the fund?

A No.

Q Were any of these matters resolved between the fund and the Horvaths prior to the adjudication of Neisco as a bankrupt?

A The Neisco matter had been-- was completely resolved-- the matter of Ernest's contract was still in a matter of flux. It had not been determined, to the best of my recollection.

Item 5 had been agreed to.

Item 6 had been agreed to.

Item 7 had been agreed to.

Q I think you misunderstood my question, Mr. Ballon.

The question was: Were any of these items -- forget Neisco itself-- ever consummated? In other words, take item 2 --

A I thought you said agreed to.

Q No, consummated.

Q Was the sum of $85,000 ever--

A To the best of my knowledge they were not consummated.

Q Did John Ellen ever cause to release the Horvaths-- the stock in Netherland Mines?

A I seem to have a recollection that may have been consummated. I don't recall.

Q No. 4, you have no recollection of, that's the employment agreement of Ernest.

A You are talking too fast, Mr. Schwartz. I'm sorry.

Q No. 4 you have no recollection of, the agreement with Ernest? You don't recall --

A I have no recollection of it.

Q No. 5, was the sum of $75,000 ever available to dispose of the claim of the IRS for taxes due Masmo?

A Not to my knowledge.

Q Masmo eventually was adjudicated a bankrupt, was it not?

A Yes. I filed a voluntary petition in bankruptcy for Masmo at the request of the fund.

Q Do you know that the Horvaths eventually bought the trustees right, title and interests in the Masmo assets?

A I don't recall.

Q Did you ever hear of the firm called Balder Enterprises?

A No.

Q Is that a Horvath company?

A P --

Q B like in boy, a-l-d-e-r.

A B-a-l-d-e-r --

Q Enterprises.

A I don't recall ever hearing that name before.

Q Was the security deposit of $20,000 made by Montmartre ever disposed of, item 6?

A I don't know because-- I know that therae was litigation between tha fund and Horvath down in Florida concerning the Montmartre, and I know that the fund eventually paid something like a million and a half dollars to Horvath, so I don't know whether this particular amount of $20,000 was included in the million and a half dollars that the fund paid to Horvath.

Q What you mean is that the Horvaths sued the fund in Florida and the action was eventually settled for a million and a half dollars, isn't that so?

A Yes, I believe that's it.

Q Was item 7 ever consummated, the transfer of the life insurance policies back to the Horvaths?

A I don't know. I don't think so.

Q Don't you know the fund still owns those policies?

A I beg your pardon?

Q You don't know that the fund still owns those policies?

A I don't know, no. I don't know what the fund owns. I have very little knowledge of the fund.

Q Did the fund advance any money to purchase the 5/8 interest in the--

A No, that didn't go through.

Q Was anything ever done with respect to Montmartre as outlined in item 9?

A I can't tell you what happened with Montmartre, except to the extent that I know that there was a lawsuit and I know that the fund paid to Mr. Horvath a million and a half dollars. That's all I know about it.

So what happened, as far as I know, the fund then acquired the Montmartre property, so I can't tell you any more about it than that.

THE COURT: Mr. Schwartz, will the relevance of these tangled affairs to the particular claim before me be made apparent at some time?

MR. SCHWARTZ: The relevance is very simply this, your Honor: We have the same matter in another action which was decided by Judge Bonsal just recently.

The fund wanted to settle everything, all of their problems with the Horvaths, and they had a lot of problems as you heard from these things. They were not going to settle anything piecemeal. What they were going to do in Neisco was contingent upon doing it with everything and it all fell apart because nothing was consummated.

THE COURT: All right.

MR. SCHWARTZ: I suppose your Honor can take judicial notice of the decision by a judge of this court, in an action brought by Ernest Horvath v. the fund claiming agreement to make this consultant arrangement, to have Neisco make it with the fund guaranteeing the payments up to the amount of $200,000; Judge Bonsal found that there was no such agreement and in his opinion, his decision was that all of these negotiations were negotiations towards a common settlement of everything between the Horvaths and the fund, and nothing was achieved.

THE COURT: I didn't mean to provoke a long discussion. I simply wanted to indicate to counsel that I wasn't quite sure of where we were going, and I have no doubt that reflects more on me than on counsel, but I thought in fairness, I should say that I didn't quite understand.

MR. SCHWARTZ: Where we are going is that whatever the discussions were in Chicago, everything was tied up in one bundle to settle all of the Horvath problems. There was no settlement. There were a lot of discussions that went on for years and eventually blew up.

THE COURT: I understand that to be --

MR. SCHWARTZ: That is -

THE COURT: I understand that to be your contention.

MR. KNIGIN: May the comments by Mr. Schwartz concerning the success or failure that he enjoyed in another case is totally unrelated to this case and for which he has not completed res judicata.

I would ask that those remarks be expunged from the record as not being relevant to this action.

THE COURT: Let us say that I willgive them such weight as I feel they may be entitled to.

Proceed, Mr. Schwartz.

I apologize for the interruption.

BY MR. SCHWARTZ:

Q When you discussed this matter with the fund in your first meeting in Chicago, you didn't arrive at any plan of arrangement at that time, did you?

A No, not a final arrangement. A tentative arrangement, yes.

Q I think you testified that Mr. Matheson said you may proceed with the Neisco Chapter XI provided that the costs outside of the money advanced for operating would not exceed $300,000.

A Yes. He was pinning me down onto a total amount that the fund would have to advance.

Q Do you know what the ultimate settlement agreement was with the government?

A No.

Q Do you know that that would have required a commitment by the fund to at least $275,000?

A I would say that that's not correct.

It could not possibly be correct.

Q Do you know that the fund-- the government wanted the fund to guarantee payment of half the total amount of the taxes?

A That is not my recollection at all.

Q Do you know that the Horvath claim for a consultant's agreement required, at least on his part, he wanted the fund to guarantee payment of at least $200,000 of his consultant's fee; are you aware of that?

A I had nothing to do with the Neisco plan of arrangement.

Q Isn't that one of the stumbling blocks which prevented the Neisco deal from ever coming to a final conclusion?

A No, absolutely not.

Q Tell us what your recollection is about the effect of the Ernest Horvath consultant agreement on the Neisco plan of arrangement?

A That came up as a result of the determination on the part of the fund that they would take over the plan or turn it over to Mr. Eisenrod, at which point it would no longer be necessary for Mr. Horvath to be employed there, they would not need his services there, or if they would need him, they would only use him as a consultant.

I am talking about Mr. Ernest Horvath at that time.

That had nothing to do with the Neisco plan of arrangement, the terms of which were approved or agreed upon between various people in the fund and myself.

That was part of the negotiations in connection with the Montmartre situation, and in connection with that entire overall picture, Mr. George Horvath was going to withdraw completely, as I testified before, from the Neisco operation, and he was going to be operating the Montmartre situation.

Q As a matter of fact---

A -- these are separate and apart transactions. They had nothing to do with one another.

Q Wasn't George's withdrawal from Neisco accomplished at the insistence of the government who stated that they would make no settlement of any kind with Neisco as long as George Horvath continued in the company?

A I have no knowledge of any such settlement.

Q You have no knowledge of that?

A None whatsoever.

Q Did you read the minutes of the magistrate's proceedings --

A Of what?

Q The bankruptcy proceedings of Neisco?

A Some of them I did, yes.

Q And you don't recall reading anything about that?

A I don't recall anything like that.

Q These negotiations went along for about a year and a half, didn't they?

A I guess they went along for more than a year and a half. They went along all during 1970, 1971, I guess they carried over into 1972. I would say probably we were negotiating for two years or very close to it, anyway.

Q Do you recall my asking you these questions and your making the answers which I will read on your deposition before trial in this action, which was taken on June 27, 1974? I read from page 18, line 8:

"Q What was the subject matter of the telephone calls of November 7 to the attorney in Detroit who, I assume, was Mr. Radom?

"A These conversations went on from time to time and Mr. Radom or Mr. Teitlebaum would make a suggestion and I would make a counterproposal and vice versa and we would try to reach a meeting of the minds as to these requirements of the fund."

Do you recall that?

A I assume you are reading from my testimony?

Q Yes.

A Yes, I recall that.

Q Do you recall this question and answer:

"Q Did that meeting of the minds ever come about?

"A I would say yes.

"Q When?

"A A complete meeting of the minds, possibly a year and a half later. There were always details that were being approached back and forth because as the proceeding went on, there were other questions that arose such as agreements, contracts, and eventually the fund suddenly made a decision that they wanted to take over the entire Neisco operation so there were various progressive alterations made. A meeting of the minds would be reached and it would be changed from time to time as the fund changed its mind."

Do you recall that?

A I recall that.

Q Do you recall this one:

"Q Were there any changes in mind by George Horvath?

"A I would say he did change his mind in order to meet the demands of the fund. In other words, he was adamant originally in not filing a Chapter XI, and that is a change of mind. He acquiesced in a Chapter XI proceeding despite the fact that he was very adverse to it. He was very adverse much later in the proceeding to withdraw from the Neisco situation completely, but eventually he acquiesced on it. There werevarious things. He had negotiations going on."

Was that correct? Was that testimony correct?

A Did I say that?

Q Yes.

A Yes.

Q Yes, you did.

A I say yes, I did. You are reading my testimony.

Q I am reading your testimony.

A I am acknowledging that you are reading it.

"Q Did the matter ever progress to the point where there was a written document signed by both sides that was agreeable to both sides?

"A As to these various other details?

"Q Yes.

"A No."

Was that your testimony?

A Yes.

THE COURT: I perceive no inconsistency yet, Mr. Schwartz, do you, with the testimony given on this trial?

MR. SCHWARTZ: As I understand this testimony, the testimony is that everything happened together, including Neisco. There is no distinction here between Neisco and anything else.

THE COURT: I see.

All right.

Q You have told us a good deal about Mr. Rugendorf and Mr. Eisenrod.

They had their own office in New York City, did they not?

A They had offices there, yes.

Q They were not employees of the fund, as far as you know?

A Mr. Rugendorf told me he was.

Q An employee of the fund?

A He told me he was employed by the fund in various capacities in various situations.

Q You mean as a consultant?

A I don't recall him using that word "consultant." He told me he was employed by the fund and used by the fund, hired by the fund, and paid by the fund in various situations.

Q Mr. Eisenrod was a lawyer, was he not -- is a lawyer, is he not?

A I know Mr. Eisenrod for many years. He was a lawyer. I don't think he was practicing at this time any more.

Q At the present time he is engaged in business as a business promoter, developer, things of that nature?

A Well, at the time in question he was building a very large development or had already completed a development down in Florida, which the fund was financing for him.

Q And he was also engaged, do you know, in other ventures involving real estate operations?

A I don't know that much about Mr. Eisenrod's business.

Q Do you know that he was not an employee of the fund?

A I do not know that. I know they employed him in this situation. Then eventually it turned around into a buy-sell arrangement.

Q I'm trying to establish, Mr. Ballon, whether you know that either Rugendorf or Eisenrod were on the payroll of the fund as employees, as distinguished from being independent people in New York who were retained by the fund to give advice or to do certain functions for their purposes in connection with the Neisco thing?

A I thought I answered the question. Mr. Rugendorf was employed by the fund in this situation and in various other situations, according to his information to me.

Mr. Eisenrod had a very close relationship with the fund in that he was a very substantial debtor of the fund and they asked him to step into this situation originally as an overseer, as an adviser, and as their representative here in New York, and subsequently, either they asked him or he asked them, to enter into an arrangement whereby he would acquire the Neisco operation. And he would assume the indebtedness to the fund.

Q Would you accept the fact that Mr. Eisenrod was at least an independent contractor and not an employee of the fund?

A I couldn't answer that question. I don't know.

Q You don't know that he was an employee of the fund, though?

A I only know what I have told you.

Q Did anyone other than Mr. Rugendorf tell you that he was employed by the fund?

A Mr. Weisser was employed by the fund.

Q I didn't ask you that. Mr. Weisser was an independent CPA, wasn't he?

A Oh, yes; did anybody tell me that Mr. Rugendorf was employed?

Q Yes.

A Oh, yes, if I was told that at the meeting of the 19th, I guess everyone at the meeting told me that.

Q If you were told that?

A But if I wasn't told that at that time, then I was subsequently told that by Mr. Teitlebaum and/or Mr. Radom.

Q By whom?

A Mr. Teitlebaum and/or Mr. Radom.

Q They told you that Mr. Rugendorf was employed by the fund on its payroll?

A That is correct. Oh, I didn't-- you just added something to that.

Q I'm not trying to mislead you, Mr. Ballon, but I'm trying to draw a distinction between an employee --

A Mr. Schwartz, you asked me a question and then you changed it.

Q I didn't change it. I define employment as someone on the payroll and I defined an independent agent as a consultant.

Did anyone tell you that Mr. Rugendorf was on the payroll of the fund as an employee?

A No.

Q All right.

Did Mr. Rugendorf ever tell you that he was on the payroll of the fund as an employee?

A No.

Q Ar you familiar with your complaint in this action, the amended complaint?

A I haven't looked at it in a long time.

Q I show you a copy of the amended complaint in this action and I direct your attention to paragraph 7.

Would you read that, please?

(Pause)

A Yes, I have read it.

Q Would it be fair to state that that paragraph alleges, on behalf of the plaintiffs, an agreement with the fund that if the plaintiff's represent Neisco, the fund will pay their fees regardless of any outcome of the Chapter XI proceeding?

MR. KNIGIN: Your Honor, I'm going to object to this question for the reason that a letter of explanation was forwarded at least three years ago to the attorneys for the defendant explaining to them that there may have been a drafting error in the-- in one of the allegations in the paragraph, this specific paragraph, and that in light of that, would they accept an amended complaint with a new third cause of action that the draftsman felt would then cure, at least the overall problem of the complaint.

I'm sure that Mr. Schwartz is aware of that letter, but if he isn't, I would be happy to present it to him at this time.

MR. SCHWARTZ: I am not aware of the letter.

A motion was made to amend the complaint. A stipulation was made to accept the amended complaint and what I am showing the witness is the amended complaint.

This is the first cause of action we are dealing with, not the third cause of action, Mr. Knigin.

MR. KNIGIN: I am very much aware of that.

MR. SCHWARTZ: Does your Honor have the court file in this action?

THE COURT: I do.

MR. SCHWARTZ: It may be helpful if we could pick out the amended complaint there and follow the language.

THE COURT: The amended complaint, of course, speaks for itself. I am not quite sure, Mr. Kniglin, if you are suggesting that I should read the letter in order to help me better understand the amended complaint.

MR. KNIGIN: Your Honor, the only reason I am offering-- I think the letter will be self-explanatory, your Honor, if I can find it.

THE COURT: So is the complaint, I would have thought.

MR. KNIGIN: I have it here, your Honor. The letter was dated November 19, 1973, which was addressed to Mr. Laurence Vogel, by Mr. Daniel Cohn, from the firm of Ballon, Stoll & Itzler--

THE COURT: What date, do you say?

MR. KNIGIN: November 19, 1973, your Honor, in which he stated, "That in order that all issues may be promptly presented before the Court, we would like to serve an amended complaint to include a third cause of action simply based on a contract as the first cause of action, but the agreement involved affects defendant's promise to pay all costs, expenses and funds necessary to confirm any plan of arrangement directly to Neisco, Inc. rather than to the plaintiff."

"Apparently this was part of the parties' understanding and the original complaint is not clear in this respect.

"A copy of the amended answer is enclosed" -- I guess he meant amended complaint is enclosed.

The only reason I bring it up, your Honor, the way the question was framed by counsel in which he directed attention to this one paragraph, it is in such a manner that he didn't know that this letter even existed, and I just felt that the Court should be apprised of it before the questions continue.

MR. SCHWARTZ: I don't think that is so. The fact of the matter is that the first cause of action was realleged in the amended complaint, so that they have not abandoned that theory.

They are trying to recover on that theory and I am entitled to ask the witness about that theory.

THE COURT: You can put what questions you wish to the witness on the allegations of the amended complaint.

If Mr. Knigin feels that it is important for me to consider a contemporaneous letter addressed to the pleadings, well, I will consider that if and when it is offered.

You can proceed with your question.

MR. SCHWARTZ: Can you read the last question, Mr. Reporter.

(Question read)

THE WITNESS: It is legal phraseology, but I don't think it has any significance.

Q Is that a fair interpretation of the allegations as it is contained in the amended complaint?

MR. KNIGIN: Your Honor, I don't believe that the witness has been permitted to answer the question.

THE COURT: Yes. You were making an answer, Mr. Ballon, and you were cut off.

What were you saying?

THE WITNESS: I started to say that it is legal phraseology, but I don't see it has any significant meaning different than Paragraph 15th of the amended complaint in the second cause of action.

Q What does the phrase in the last two sentences of Paragraph 7 --

A Would you like me to read them to you?

Q I will read it.

"Unconditionally promised and agreed to pay to plaintiff the reasonable value of the said legal services."

What does that phrase mean as distinguished from the language in Paragraph 10 that you referred to?

MR. KNIGIN: Your Honor, I object. The document speaks for itself.

THE COURT: You are asking this witness for his interpretation of the pleadings?

MR. SCHWARTZ: Of his own pleading, yes.

I will withdraw that question.

Q Is there anything in Paragraph 7th of the complaint which indicates that the fund undertook an obligation to fund the cost of the Chapter XI proceeding?

MR. KNIGIN: Your Honor, again I object. The allegations speak for themselves.

THE COURT: I really think I can read these allegations and understand them, Mr. Schwartz. I don't see that this line of questioning is helping me that much.

BY MR. SCHWARTZ:

Q I direct your attention to Paragraph 19 of the complaint.

A 19, did you say?

Q Yes.

Is it your contention that the fund, at the meeting of November 5 in Chicago, did not intend to advance funds for the reorganization?

A It is my contention that somewhere along the line, whether they did at that particular moment in time, I don't know, but at some point in time, despite the fact that they continued to lull me into a complete sense of security, and induce me to continue my efforts and the efforts of my firm to promulgate this plan of arrangement, they did not in fact intend to go through with their representations.

Q Was that, to your understanding, before or after they advanced the $1,600,000?

A I didn't hear your question.

Q Was that before or after they advanced the sum of $1,600,000 to Neisco during the pendency of the proceedings?

A Was what before?

Q That they changed their mind about going ahead?

A Probably after. I couldn't tell. I don't know what was in their mind at that time.

Q Do you have any reason to believe that at the time you had the conferences in 1969, before they had advanced all of that money, or -- that they did not intend to go through with the plan of reorganization?

A Their subsequent conduct would seem to indicate that that was so.

Q What conduct?

A The fact that they continued to go along and induced my firm to render the services -- and, incidentally, which is of no concern to me, induced the Horvaths to give up this, that, and the other thing, all the way along the line, in order to have this accomplished.

They probably wanted to accomplish these very things and acquire the properties from the Horvaths, such as the policies, such as various other things, offices, giving up stock, and various things like that; possibly they were doing that and advancing the money to accomplish these other ends.

Q Couldn't they have taken over Neisco lock, stock and barrel any time they wanted to by reason of their lien position?

A That wasn't what they wanted to do because a going business was worth a great deal more to them than just closing it down and getting a piece of iron, junk, which is what the appraiser told them, they could not possibly realize the moneys they had in there.

Q Do you have any idea when they changed their minds about going through with the plan of reorganization?

A I'm sorry, I can't read into the minds of the trustees of the pension fund.

Q In your third cause of action you plead a contract based upon the fund's alleged agreement to fully fund the reorganization.

A Yes.

Q Did you ever at any time write a letter to the fund confirming your arrangement as to fees?

A No.

Q Did you ever write a letter to the fund confirming their obligation to fund the reorganization, the Chapter XI?

A No.

Q Did you ever --

A Possibly I didn't hear that question.

Would you repeat that question? I'm sorry. I thought I heard it correctly.

(Question read)

A To the extent that letters were written that are in evidence, and I think there were several other letters similar in nature, they all confirmed the fact that the fund would fund the entire plan of arrangement in the Chapter XI proceedings.

I didn't hear your question correctly. You will have to forgive me.

Q Aside from those letters, was anything else written that we have not received in evidence?

A Aside from the letters that were written?

Q Aside from letters that are in evidence, was there anything else written by you?

A I seem to recall there was at least one more letter that doesn't seem to be in evidence, yes.

Q Do you recall when that was written?

A I think there was one in June. Do we have that in evidence? I seem to recall that there was one in June.

Q Will you try to find that overnight and produce it tomorrow, if there is --

MR. KNIGIN: There are three more letters that he is talking about, I think.

A These are all in evidence. I thought there was one more in June. I don't know. I don't seem to have it here.

I may have inadvertently written down the wrong date, but I thought there was one in June.

Q Can you point out in any of the letters which are in evidence language which you consider is a confirmation of a commitment by the fund, other than -- rather than a proposal for future action, if it can be accomplished?

MR. KNIGIN: Objection, your Honor, the letters speak for themselves.

THE COURT: Overruled.

A These letters were written in the context of conversations which preceded them.

We had meetings, conferences, and telephone conversations wherein these things were agreed upon, and all I did was confirm herein these letters the agreement that had been reached between myself and the Horvaths and the trustees, through Mr. Radom, or through Mr. Vogel's office, or through the trustees themselves directly.

So that your Paragraph 1 in virtually any of these letters is merely a confirmation of the agreement that had been reached.

Q I direct your attention to Plaintiff's Exhibit 4.

A Yes.

Q April 21.

A Right.

Q The paragraph before Paragraph 1: "As usual, this letter is written entirely without prejudice and shall not be used by the parties against each other or for any purpose whatsoever unless the same is consummated."

Is that consistent with your position that Paragraph 1 represented an agreement that had been arrived at?

A No,because the Horvaths and the fund were greatly apart and were virtually on the verge of litigation with reference to the Montmartre down in Florida. And I could not put anything into writing which would possibly prejudice any party's position with reference to the Montmartre situation.

That was the reason for putting in the "without prejudice" which I think you will find in virtually every one of the letters.

Q As a matter of fact, isn't everything without prejudice according to the language of your letter?

A I think your question -- I'm not sure I understand your question.

You said is everything without prejudice?

Q In your letter you didn't say "This is without prejudice to Montmartre" -- you said "This is without prejudice and will not be used for any purpose whatsoever unless the same" and the same means everything -- I assume the language says "is consummated."

A That's what my letter says. You asked me if there was a confirmation and I'm telling you that Paragraph 1, in the context in which it was written in all of these letters, was a confirmation of the agreement which had been orally agreed upon between myself, the Horvaths and the fund and its representatives.

There was never any disagreement about that.

Q Paragraph 27 of your amended complaint states-- this is the last six lines -- the fund "unconditionally promised and agreed that it would take all necessary steps and furnish all of the funds required to confirm any arrangement or plan acceptable to Neisco's general unsecured creditors, including payment for the legal services to be rendered by plaintiff in the Chapter XI proceeding and all other administration expenses of said proceeding."

Was that ever confirmed in any writing?

A Only to the extent it was confirmed by these letters.

Q If the creditors had insisted on 100% payment of their claims, would that have been within the contemplation of this allegation of your answer that they unconditionally promised?

A Would you repeat the question, please? I didn't hear the first part of it at all.

(Question read)

A No, the agreement, as I told you previously, and as I had outlined at the two meetings in Chicago, was that I was going to get a settlement with creditors of somewhere around 15 cents on the dollar, and when I had gotten it down and was trying to get it 10%, before I got to 12-1/2%, I got an approval of the 12-1/2% from Mr. Radom, and whomever else -- and whomever he represented at that time. And I didn't go ahead without his approval on it. So the plan had to be according to the approval of the fund, and the plan was in accordance with the approval of the fund.

Q As a matter of fact, in this allegation of the complaint you make no reference to the government claim at all.

Could an arrangement be approved without settling the government claim?

A I suppose there isn't any in there. I don't know if there is or not.

Q In the allegation of this paragraph, was it the fund's obligation to pay the government's claim in full if it couldn't be compromised in some way?

A No. I told you originally that the plan was that we would try to work out some arrangement with the government, with the IRS, along the lines of making a down payment, possibly as low as the sum that was being paid out to general creditors, and the balance over an extended period of time, which I think eventually was four or four and a half years.

Q Isn't what you are saying in substance with respect to these qualifications, isn't that essentially that the fund agreed to pay or to underwrite a plan of arrangement that it would agree and accept, that it was agreeable all around?

A Within the parameters of our conversation in Chicago on November 5 and November 19.

Q And that was a total overall cost of no more than $300,000?

A I beg your pardon?

Q And that was a total overall cost of no more than $300,000?

A A total overall immediate down payment. Not the overall cost. In other words, if you had a four-year payout to the fund-- to the IRS, that would not be included in that $250,000 or $300,000. It was just a down payment.

Q Would the guarantee of half the government's claim --

A I beg your pardon?

Q Would a guarantee of $225,000 to the government be included in there?

A I have no discussion about guarantees to the government.

Q As a matter of fact, that wasn't even discussed with the fund at that time until much later?

A If that were included at any time, it would have been with the approval of the fund.

Q The fund's position as a secured creditor having a lien exceeding the value of all the assets was obviously in conflict with the interest value of other general creditors and even with the government, isn't that so?

A Is that a question?

Q What?

A Is that a question?

Q I ask you, isn't that a fair statement of the situation?

A No, it couldn't be a fair statement in this case because general creditors had nothing-- could acquire nothing because all the assets were already pledged to the fund. This was disclosed to general creditors at the general creditors' meeting.

Q Assuming that someone had collateralized the fund's liens and set those liens aside, would the general creditors have been in a position where they might have been paid?

A Well, if you want me to assume things, I guess I'll have to answer on your assumption.

If, assuming that the lien was set aside, then the general creditors would have some money.

Q Neisco in this proceeding was a debtor in possession, was it not, as distinguished from a simple debtor not in possession?

A Neisco was a debtor and a debtor in possession, yes.

Q And there was no receiver or trustee of the company?

A No.

Q Are you familiar with Section 342 of the Bankruptcy Act?

A No, I am not.

Q Let me show it to you.

A I don't know them by number.

Q I understand.

A Yes?

Q Under Section 342 of the Bankruptcy Act, a debtor in possession has the rights and powers of a trustee in bankruptcy, does it not?

A Yes.

Q And that includes the right to challenge liens of lien creditors if they are not properly filed, if they are fraudulent, if they are preferences or whatever.

A I doubt that that is a correct statement.

Q What are the powers and duties of a trustee under the Bankruptcy Act?

A To that extent they would be definitely -- a trustee would have the power to challenge a lien.

Q Doesn't this section expressly give the same power to a debtor in possession?

A It so said. I don't think you will find the decisions following that.

Q Would it not be putting your firm in a position of direct conflict of interest to be paid by the fund, a lien creditor, at the same time that you are representing the debtor in possession, whose obligation as a trustee is to protect general creditors?

A On the contrary, there was no conflict, and certainly it didn't put me or my firm in any such position.

There was a full disclosure made in our original petition that the fee had been paid by Montmartre. That is contained in our original papers, and there were full disclosures made in court.

First, I should say full disclosures were made at the general creditors meeting to all the creditors in attendance, and, furthermore, in court on numerous occasions, time and again statements were made that the funds to finance the settlement, to finance the plan of arrangement were forthcoming, or would be forthcoming from the fund.

Q Did you ever disclose in the petition that the fund had agreed to finance the plan of arrangement without qualification?

THE COURT: Which petition?

MR. SCHWARTZ: The petition of Neisco under Chapter XI.

A There is no place for such a disclosure in that petition.

Q Did you disclose in the affidavit for the appointment of attorneys for the debtor in possession that the fund was going to pay the legal fees of the attorneys for the debtor in possession?

A No.

Q Did you include in the affidavit in support of the --

A Just a moment, Mr. Schwartz. I don't want you to repeat the question.

Go ahead.

MR. SCHWARTZ: Will you repeat the question, Mr. Reporter.

THE WITNESS: I didn't say anything yet. I wanted to stop you.

MR.KNIGIN: You looked away, Mr. Schwartz.

THE WITNESS: You moved away and I wasn't going to catch your question.

MR. SCHWARTZ: I thought you meant the last question.

Q Are you familiar with the affidavit that was submitted in support of the application for the apointment of your firm as attorneys for Neisco as debtor in possession?

A It is the usual form. Nothing unusual about it.

Q Does that usual form, and did this specific form state that there was no conflict of interest between your firm and the creditors?

A Does it contain such a statement?

Q Yes.

A Something along that line, yes.

No adverse interest, I believe, is the word.

Q Did it contain any statement that the fund had agreed to pay your fees?

A There would be no requirement for that there. No necessity for it there.

Q Are you familiar with -- withdraw that question.

Assuming that the fund had an adverse interest to the general creditors, and that you were represeing the fund, would it have been required under the bankruptcy rules to state that that conflict of interest existed?

MR. KNIGIN: I'm going to object to the form of the question.

Mr. Schwartz is not only suggesting that a conflict of interest occurred, but he is now suggesting that maybe we should have had something to say about it.

I think that the question as to form is inappropriate.

THE COURT: He is asking the witness to assume that there was an adverse interest between the fund and the debtor in possession. And in the light of that assumption, he is asking what consequences might follow.

I appreciate that it may very well be one of the issues between the parties as to whther or not such an adverse relationship existed, and in permitting the question to be answered I'm not making any indication one way or the other as to how I would resolve that question if it turns out to be one of the questions I have to resolve, but this is a subject which is central to one of the defenses, and I will permit considerable latitude at cross-examination on it.

So on that understanding, and recognizing that the question contains an assumption, with which the plaintiff does not agree, I am going to permit the answer.

Having said all of that, would you read back the question, please.

(Question read)

THE WITNESS: That question is almost impossible to answer, your Honor. It is assuming that the fund has an adverse interest and I am representing the fund.

Where would I be disclosing it? To who would I be disclosing it? What obligation would I have? Does he also assume in that question, if I may ask, that I am also representing Neisco?

I don't understand the question.

THE COURT: As I understand it, Mr. Ballon, he is focusing on the application that your firm made to the Bankruptcy Court to be appointed as counsel for Neisco, as debtor in possession -- isn't that correct, Mr. Schwartz?

MR. SCHWARTZ: Yes, sir.

THE COURT: -- and he is asking you to assume that at the time of your firm's application to be appointed as counsel for the debtor in possession there was an adverse interest between the fund, as a lien creditor, and general unsecured creditors of Neisco.

Isn't that the thrust of your assumption?

MR. SCHWARTZ: You are exactly right, your Honor.

THE WITNESS: Then he added on something and he assumed that I was representing the fund.

That I don't understand.

If your Honor would have the question read again, that is the part that confused me.

THE COURT: It might be just as well if you restated the question.

THE WITNESS: Thank you, your Honor.

THE COURT: Restate it or repeat it, but I think that perhaps rather than going back -

MR. SCHWARTZ: Let me change it slightly.

Q Assuming that the interests of the fund, as a lien creditor, were adverse to the interests of the general creditors in the Neisco estate, would it be incumbent upon you to disclose your relationship with the fund and the fact that you were receiving payment from the fund in the Bankruptcy Court as a condition of complying with General Order 44 and Bankruptcy Rule 215 in disclosing any adverse interest?

A Absolutely not.

Q That is your interpretation of the rule?

A I was not being employed by the fund and I was not being paid by the fund.

Q Who were you being paid by?

A The fund was advancing the moneys to pay us.

Q Isn't that the same as being paid by the fund?

A Oh, no. I was being employed strictly by Neisco.

Q To whom was the fund advancing moneys to pay you?

A To Neisco. Obviously to Neisco.

Q Is Neisco a third party source---

A In this situation, they answered to Montmartre, and Montmartre paid me, and I made that disclosure to the Court and I further made a complete disclosure to the Court time and time again, that the fund was going to advance all the moneys and infuse all the funds necessary to finance the Chapter XI plan.

That was-- that is a matter of public reocrd at every one of the hearings.

Q In your earlier testimony this morning, I think you told us that your understanding with the fund was that you would be paid by a third party source, that that was perfectly all right.

A My understanding and my testimony was that the fund would either infuse the necessary funds into the Neisco Corporation, in which event I would have to make an application to the Court to fix my fee, or, if they determined to use a third party, such as Montmartre, or any other corporation or any other device that they had to pay me, I could come to an agreement with the fund on the fee. Because if it were being paid by Neisco directly, the application had to be made to the Bankruptcy Judge or the Bankruptcy Referee at that time.

THE COURT: Let me ask you this, Mr. Ballon. In considering those alternative sources of your fee, I understand that one possible source was Neisco itself, in which case you would have to make an application to the Bankruptcy Judge; a second source would be what you have referred to as a third party, which--

THE WITNESS: That is the language usually used.

THE COURT: Yes, but I'm not that familiar with it.

In this particular context would such a third party be someone other than the fund, like Montmartre, or would the fund itself be regarded as a third party?

THE WITNESS: The fund could be a third party, too.

THE COURT: During the course of these initial discussions, was it ever contemplated between you and the gentlemen from the fund as one possible way of paying your fee that the fund itself would do it?

THE WITNESS: Yes. They did not make definite which way they would do it. They said that's the mechanics of things which we will determine when the time arrives.

Q I show you this copy of the order authorizing the retention of attorneys and the petition and affidavit attached to it and ask you whether that is the paper that was submitted to Judge Babbit to approve the appointment of your firm as attorneys for Neisco in the Chapter XI proceeding?

A Yes, that seems to be it.

Q Is there any reference in either the petition or in the affidavit to any payment by Montmartre to your firm?

A Yes.

Q Will you point to that?

A No. It is right in the petition, in the Chapter XI petition. It is right in the Chapter XI petition where it is provided "Where did you get paid? Who paid you?" It specifically says "Montmartre paid me $25,000" --

THE COURT: In which petition?

THE WITNESS: It would be in the Chapter XI petition itself, your Honor. It is one of the schedules.

What schedule is it, Mr. Itzler?

MR. ITZLER: Schedule B. Schedules submitted --

THE WITNESS: In the Chapter XI proceeding itself, your Honor. There is no provision for it.

MR. SCHWARTZ: May I offer this in evidence in the meanwhile?

THE COURT: Objection?

MR. KNIGIN: No objection.

THE COURT: Received.

xx (Defendant's Exhibit A received in evidence)

THE COURT: I think that the receipt of that document is the last bit of business we will attend to today because I suspect there will be a series of questions about it.

We will adjourn now until ten o'clock tomorrow morning.

(Adjourned to 10:00 a.m., September 23, 1976)

...

Ballon, Stoll & Itzler

vs. 72 Cr.2916

Thomas J. Duffey, et al.

New York, New York.
September 23, 1976- 10:00 A.M.

(Trial resumed.)

(In open court.)

F R E D R I C K B A L L O N, having been previous sworn, resumed and testified further as follows:

THE COURT: Proceed, please.

CROSS-EXAMINATION

BY MR. SCHWARTZ:

Q Mr.Ballon, I think you testified yesterday that there was reference to the payment of $25,000 by Montmartre to your firm as a retainer fee in the petition of Neisco for the arrangement under Chapter XI?

A In the schedules that were filed.

MR. SCHWARTZ: Do you have those schedules, Mr. Knigin?

MR. KNIGIN: Yes.

MR. SCHWARTZ: May I see it?

(Pause.)

MR. SCHWARTZ: May I have this marked for identification, your Honor.

xxx (Defendants' Exhibit B was marked for identification.)

MR. SCHWARTZ: May I offer this in evidence, your Honor.

MR. KNIGIN: No objection.

THE COURT: Received.

xxx (Defendants' Exhibit B was received in evidence.)

BY MR. SCHWARTZ:

Q In that schedule you mention notes payable by Montmartre?

Is there anything in that schedule or any other schedule filed which has any reference to any agreement by the pension fund to pay any further fees or other fees?

A No.

MR. SCHWARTZ: May I have this letter marked for identification.

xxx (Defendants' Exhibit C was marked for identification.)

Q I show you a copy of a letter addressed to your firm on the stationery of Neisco, Inc., which was produced by your office.

MR. SCHWARTZ: I think you will concede that, Mr. Knigin, it is part of Exhibit I on the deposition of Mr. Itzler.

MR. KNIGIN: I don't remember seeing the document before.

MR. SCHWARTZ: Let me state for the record, your Honor, that this was one of about 500 copies of letters and letters which were delivered to me by Mr. Knigin as part of the exhibit I on the deposition of Mr. Itzler before trial.

MR. KNIGIN: Your Honor, may I take one moment? I don't recall ever seeing it, but if Mr. -- why doesn't Mr. Schwartz inquire and in the meantime I will look and see if I do have such an original.

THE COURT: Is it a letter, Mr.Schwartz?

MR. SCHWARTZ: Yes. Addressed to Ballon, Stoll & Itzler, on the stationery of Neisco, Inc. It is dated February 24, 1976.

(Pause.)

MR. KNIGIN: Your Honor, let's concede for the moment that it is a letter, and let him inquire, if it is all right with your Honor.

THE COURT: So be it.

Q Do you recall receiving this letter or seeing it in your office?

A I have no particular recollection of this letter, but we do receive letters like this from various clients. I assume we received this one. I have no particular recollection of this letter.

MR. SCHWARTZ: May I offer it in evidence, your Honor, as part of a document produced by the defendants -- plaintiffs on their deposition.

MR.KNIGIN: Your Honor, in order not to delay, would you receive it for the moment and then if I have any question about it, would you at least allow me to reserve such rights.

THE COURT: I will receive it subject to that condition.

xxx (Defendants' Exhibit C was received in evidence as indicated by the Court.)

Q Do you know whether any reply was addressed to the accountants in response to the letter, Exhibit C?

A I have no personal knowledge of the reply. But I assume a reply was made.

MR. SCHWARTZ: Mr. Knigin, will you state whether you have a copy of any reply to this letter in your files? If so, will you produce it?

MR. KNIGIN: I would like to state something further than that,your Honor, if Imay.

Counsel has made reference to the fact that he took 500-odd letters from our file and Xeroxed them, and has selected this one.

We didn't leave one in and take one out, we don't even have a recollection of this one.

I am conceding for the record that this is one that we had. If there is one that we didn't have, it is because it does not exist. I can only say that our files reflect exactly what we gave to Mr.Schwartz and that was a Xerox copy of every single letter that we possessed.

In fact, he, by arrangement had it sent to a person to do it for him.

I don't know anything about what this is about, I don't know of any copy of any reply to it.

THE COURT: Let me see the letter again, please.

(Pause.)

THE COURT: The letter is dated February 24, 1970. It is from Neisco to the plaintiff firm. It appears to be what I think of as the typical auditor's or accountant's inquiry with respect to liability and accounts receivable and litigation.

It seems to me that there are two tasks that you now have, Mr. Knigin: One is to confirm, if you can, from your own files whether such a letter was received; secondly, in response to Mr.Schwartz' most recent question, whether there was a reply to it.

MR. KNIGIN: Your Honor, I will make that verification now.

Thank you.

THE COURT: Fine.

MR. SCHWARTZ: You told us yesterday that it was quite common in bankruptcy practice to have fees paid by third parties.

Can you give me a specific illustration, give the Court a specific illustration of a substantial case in which that was done in your recent practice?

THE WITNESS: It happens so frequently I can't pinpoint the name of a case for you, I am sorry. It happens very, very frequently. I imagine if I go back to the office and go through records of cases, I could get you a list of cases to that effect. But offhand I can't remember the name of a particular case.

Q You can't remember a single one over 40 years of practice?

A No. Offhand I can't remember the name of a case, no.

Q Was there ever a case that you can recall where the third party was a party having an adverse interest to the estate?

MR. KNIGIN: Your Honor, I object to the form of the question.

Counsel is presuming that there is something about this case in which there was an adverse interest. We have made this very clear that there was no adverse circumstance here, and I think that the framing of that question was an overlook in the manner in which it was done.

THE COURT: The question certainly has built into it an assumed fact which is at issue, Mr.Schwartz, whether or not in the circumstances of this case the fund was adverse to the estate, and the general unsecured creditors. It is something that is at issue.

MR. SCHWARTZ: I recognize that as a question that your Honor will decide. This man has testified as an expert to a certain practice, and I think I am entitled to cross-examine him on that practice and the nature of the practice.

THE COURT: All right. I will accept the answer, but on the clear understanding that the assumed fact,namely, the advertisty of the relationship between the creditor and the estate, not conceded in this case and it is indeed at issue.

MR. SCHWARTZ: I realize that, of course. Would you read the question, Mr.Reporter.

(Question read.)

A My answer to that would have to be that any third party who advanced funds to finance or funds a plan of arrangement would not have an adverse interest, he would have an interest in the benefit of the estate, for the benefit of creditors and for the benefit of the continuation of the business.

Whether or not he had a prior interest, I couldn't tell you.

Q Are you talking now about a motive or an interest?

A I beg your pardon?

Q In your last answer you stated that a person having an adverse interest would not advance money to the estate -- to the debtor. But that a lien creditor --- somebody advancing money would have a motive for the benefit of general creditors.

Is there a difference in your mind between a conflict of interest, an adversity of interest as a matter of law, and a motive which might tend to override that conflict of interest?

MR. KNIGIN: Objection as to the form of the question, your Honor.

THE COURT: I will overrule it. I understand it all right.

A You are propounding two different questions to me. You propounded a question of conflict of interest and diversity of interest. Which one do you want me to answer?

Q The question I asked you, I think, reframing it somewhat, is, is there a distinction in your mind between a conflict of interest as a matter of law and a motive to do something for the benefit of the doer which may override that conflict of interest?

MR. KNIGIN: Your Honor, I object. I don't understand the question.

THE COURT: I think I understand it. He is asking for a distinction between two different concepts.

If he can't answer it, that's one thing, but I think the question is proper.

A There would be a difference between a conflict of interest and a motive for doing something. These are two different categories. I can't put them into the same category.

Q In your understanding of the bankruptcy law and the bankruptcy rules, is it required when counsel applies for approval of appointment for a debtor in possession bsb-10 Ballon-cross

to disclose a conflict of interest or a conflict of motive, thatis, an ordinary motive which overrides a conflict of interest?

A When he applies for a fee at the end of the case?

Q Authority tobe retained as counsel.

A If there is a conflict of interest, it should be disclosed.

Q Is there generally considered to be a conflict of interest between a lien creditor of an estate and the general creditors of the estate?

A Not necessarily. They have different interests. I wouldn't say there is a conflict of interest. There would be a conflict of interest in the event that the lien weren't a valid lien, then there would be a conflict of interest.

Q Isn't it always the obligation of a trustee in bankruptcy to ascertain whether a lien is valid in all respects?

A Yes, that is the duty of a trustee.

Q And doesn't that create a conflict of interest between the obligation to challenge the lien or to certainly examine it and the interests of the general creditors who would like to do away with the lien?

A No, that doesn't create a conflict of interest. It imposes a duty upon the trustee to make an investigation, that's all.

Q Do you think the trustee's duty can be discharged if he is paid by the lien creditor whose lien he must challenge at the same time that he is supposed to act for the benefit of the general creditors?

A I don't understand the question.

MR. SCHWARTZ: Would you read the question back.

(Question read.)

THE WITNESS: Would you read that once more?

(Question read.)

THE WITNESS: Unless there is complete disclosure to all parties involved, that is scarcely the situation.

Q Was there any disclosure in the case of Niesco?

A Certainly.

Q Have you any document showing any disclosure?

A Yes.

Q Will you produce it.

MR. KNIGIN: All of the minutes of all of the proceedings before the Bankruptcy Judge, your Honor. As a matter of fact, Mr. Schwartz even to some degree anticipates the plaintiffs' case -- excerpt is, I have already indicated, already read, but more important than that, your Honor, there must be at least 50 yearings before the bankruptcy referee in which there was a total disclosure as to where proceeds were coming from, who was funding this, who was going to pay the attorney's fees. There is record conversations as to the fact that the money s, if they are going to be produced, could only come from the fund for the funding of the XI.

We are just overwhelmed with it. But nonetheless, your Honor, if counsel would like, I have invited him yesterday -- apparently he had other plans -- I had suggested that if he wanted to we could go and look at them together.

If you feel it is appropriate, that we could bring the minutes here. But there are hundreds and hundreds of pages of minutes that confirm this fact.

THE COURT: What this boils down to is, Mr. Schwartz asked the witness, was there disclosure. The witness said yes, there was disclosure.

Then what you have just said to me indicates your contention that an important source of that disclosure was in the minutes of the hearings before the Bankruptcy Judge, right?

MR. KNIGIN: That is correct, your Honor.

THE COURT: No doubt when the time comes you will call my attention to whatever portions of the transcript you think are material on the issue.

MR. KNIGIN: Yes, your Honor.

THE COURT: I don't think we need do it now. Obviously this case is going to have to be considered and briefed.

MR. SCHWARTZ: May I state for the record, your Honor, that I don't acquiesce in Mr. Knigin's statement at all.

My recollection of the bankruptcy minutes is that it doesn't contain a single statement by the fund to do anything.

THE COURT: I would be very disappointed if you acquiesced automatically. Both parties can show me sections from the minutes. I can take judicial notice of what was said in the minutes before the Bankruptcy Judge.

MR. SCHWARTZ: That would be quite a task for you to look through those.

THE COURT: I will read whatever counsel feel I should read.

BY MR. SCHWARTZ:

Q When your firm was appointed as attorneys, pursuant to the order of November 24, 1969, Defendants' Exhibit A, was there any disclosure in those papers to the Bankruptcy Judge of the interest -- at least the source of the fees coming from the fund?

A There was a disclosure to the Judge from the very inception of the matter that the fund was very heavily involved; as a matter of fact the Judge was determined to find out why the fund was investing so much money in this proceeding and wanted to understand the background and the reasons for the fund's involvement in the situation.

He couldn't understand the Teamsters being so heavily involved, and that -- he kept on inquiring about it. That was completely disclosed to Judge Babitt. It was completely disclosed to the creditors --

Q I think you didn't answer my question. You have told us that you told the Judge that the fund was deeply involved.

Is there any document on file in this court in connection with the appointment of your fiem as attorney which shows that the fund is going to pay your fees?

A No. No document. Excepting the minutes, of course.

Q The minutes came afterwards, did they not?

A Yes.

Q There was no hearing on or prior to November 4, 1969?

A No.

MR. SCHWARTZ: I ask your Honor to specifically note the statement in Mr. Itzler's affidavit that his firm does not represent any creditors and that neither he nor his firm represents any interest adverse to the debtor in possession. And also the very possibly unusual language, but significant here, in the very last paragraph of his affidavit where he says --

MR. KNIGIN: Which point was that, Mr.Schwartz?

MR. SCHWARTZ: The second paragraph of Mr. Itzler's affidavit where he says that"neither y our deponent nor any member of the firm has any connection with the above-named debtor, its creditors or any other party in interest, or the respective attorneys, except, as follows:"

Then in the exception there is not the slightest reference to the fund or any arrangement with the fund for the payment of fees, which I would think at the very minimum would be some kind of a connection.

I also point out that in the affidavit of George Horvath, paragraph 9, that Ballon, Stoll & Shyman represent no interest adverse to the petitioner nor the estate in the matters upon which it is to be engaged.

There is no reference in that petition to the pension fund at all.

Q You have a large schedule of notes of work done in this matter, which was marked Exhibit A on your deposition before trial.

Do you have that before you, Mr.Ballon, this document?

A Yes.

Q On the date of January 11, 1970, you make reference to a Benjamin C. Cohn, a possible -nvestor. Do you see that entry?

A Yes.

Q What was that about, can you tell us?

A I haven't the faintest recollection. Benjamin C. Cohn -- I haven't the faintest recollection.

Q Do you know who Mr. Cohn was?

A Yes, I do.

Q Who was he?

A He is in the finance business.

Q Was his interest in taking over Neisco?

A No.

Q Was it a taking over Montmartre?

A No.

Q Did it have any relation to Neisco at all?

A I doubt it. I think it was in connection with some loans he was making to Mr. Horvath or possibly to -- in connection with the Montmartre situation. I have no recollection, so I can't tell you.

I don't recall any connection with Mr.Cohn to Neisco as such.

Q That conference was attended by you, was it not, personally?

A Could be.

Q Under date of March 27, 1970, there is an entry, "Drafted proposal to pension fund, three hours".

Do you recall that item?

A Yes. I don't recall that particular entry, but I see what you are referring to.

Q Was that an item of work that you did or that someone else did?

A No, the proposals I did.

Q You did. Do you have a copy of that proposal?

A I assume it is the proposal that is dated March 30, which is in evidence.

Q You mean the letter --

A I don't know the number of the exhibit, but it is in evidence.

Q Are you referring to the letter to Sol Eisenrod, Plaintiffs' Exhibit 11 -- I am sorry --

A If that is dated March 30th, that's it.

Q Plaintiffs' Exhibit 8.

A If that is dated March 30, that's it.

Q Under date of April 21, you have an entry "Prepared agreement of settlement".

Do you see that two hours?

A Yes.

Q What does that have reference to?

A That has reference to the same thing that the last item on that page has reference to. It is with reference to the letter -- one of the exhibits dated April 21 that was sent to Mr. Radom with a copy to Mr. Eisenrod.

Q Would that be Plaintiffs' Exhibit 4?

A If that is the date of it, it would be. You are not showing it to me, Mr.Schwartz, so I can't tell you.

Q Is that this letter, Plaintiffs' Exhibit 4?

A Yes.

Q We had quite a bit of discussion yesterday, if you recall, about whether Ernest Horvath was to be employed by the fund or by Neisco directly.

I show you a document and ask you whether you recall this as a draft of an agreement for employment of Ernest Horvath by Neisco, Inc., which was drafted by your office.

A Yes, I believe this was prepared by my office.

MR. SCHWARTZ: May I offer that in evidence?

THE COURT: Is there objection?

MR. KNIGIN: No objection.

THE COURT: Received.

xxx (Defendants' Exhibit D marked for identification now received in evidence.)

Q At the same time that this agreement, Exhibit D was drawn, did you or your office prepare a guaranty by the fund of the payment to Ernest Horvath of his consultant fees by Neisco?

I show you a copy of the draft.

A This seems to be a part of that agreement. At this time the fund was already undertaking to acquire Neisco for itself, or for Mr. Eisenrod, and part of the negotiations with reference to that, and the reference to the Montmartre situation required the employment of Ernie Horvath, guaranteeing a part of his salary to be executed by the fund.

MR. SCHWARTZ: I offer that document in evidence.

MR. KNIGIN: No objection.

THE COURT: Received.

xxx (Defendants' Exhibit E for identification received in evidence.)

Q These docuemtns were never signed by the fund, were they?

A I didn't hear you.

Q These documents, Exhibits D and E, were never signed by the fund, were they?

A Not to my knowledge.

Q As a matter of fact, you know that Ernest Horvath brought a litigation against the fund claiming an oral agreement to do this?

A I told you yesterday, I just learned it in the last couple of days.

Q And you know that that cause of action was dismissed?

A I beg your pardon?

Q And you know that action was dismissed by Judge Bonsal?

A I don't know anything about it. I thought it was pending, as a matter of fact. I say, I don't know. I thought it was pending.

MR. SCHWARTZ: May I offer in evidence, your Honor, a copy of Judge Bonsal's decision.

THE WITNESS: I have no knowledge of the case. My firm is not involved in that case.

MR. SCHWARTZ: I offer this in evidence. I think your Honor can take judicial notice of it.

THE COURT: Yes. I don't think it need be formally offered in evidence. You can just give me a copy of it and I will consider it.

MR. KNIGIN: I don't know the purpose for the offer, your Honor, but if it can in some way bind the Court in connection with this case, I submit that there has been no foundation laid for such an application.

If it is just to have the Court participate in the determinations of other Judges of this Court, I concede that your Honor can take judicial notice of any determination or any decision, whether reported or unreported, and I don't know what the probative value of this document is for the purposes of this case, and why an offer of this kind of another Judge's decision in a case totally unrelated to this one would have any effect in this case.

THE COURT: I will read it as part of my homework. I really don't think it need be offered as a document would be offered in evidence.

Whether or not it has any relation to the issues before me, counsel can address themselves to that later.

MR. SCHWARTZ: May I just identify it for the record and I will --

MR. KNIGIN: Before it is identified, your Honor, may I just ask that in the same spirit in which we have tried to furnish copies of all exhibits to counsel for the defendants, may I ask that if this is being offered as part of some law that is being utilized for the enhancement of defendants' action here, just as he presented me with a copy of his trial memorandum, I would ask that he also present me with a copy of this.

MR. SCHWARTZ: I will be happy to do so.

This is a decision by Judge Bonsal, dated June 10, 1976, in the case in this District, Horvath -- Ernest V. Horvath against Thomas J. Duffey, et al, 73 Civ. 1248.

Since this is the only copy I have with me, with your Honor's permission I will have it Xeroxed and furnish a copy to counsel.

THE COURT: Fine. Just send it to chambers and give your brother a copy.

BY MR. SCHWARTZ:

Q This business of Ernest Horvath being employed by Neisco and the employment being guaranteed by the fund was a matter which didn't exist in the original conferences between you and the fund back in November of 1969, did it?

A No.

Q Wasn't it a fact that the Horvaths insisted that unless they got such an employment agreement there would be no deal at all withrespect to Neisco?

A No, you are taking it out of context again. This was in connection with the Montmartre situation.

Q Did they insist that if Ernest didn't get this employment agreement and guarantee that there would be no deal at all among the fund and the Horvaths?

A No. As a matter of fact, we were down to confirmation in the plan in Neisco. It had no relevance in the matter at all. This was an attempt to settle the various Montmartre situations and the various other complications that were involved.

Q Are you telling us that the Neisco reorganization was not affected by this agreement?

A That's what I just said.

Q Are you telling us that the Neisco arrangement would have been acceptable to the Horvaths if this agreement weren't signed?

A Yes. There would have been no settlement of the Montmartre situation. As it subsequently turned out, there was a settlement of the -- not settlement of the

Montmartre situation until litigation ensued.

Q As a matter of fact, the settlement of the Montmartre situation came long after the Neisco Company was adjudicated in bankruptcy, didn't it?

A I don't know how long after.

Q But it did come afterwards?

A Yes, after Neisco went under, then the Montmartre situation was not resolved and the litigation ensued down in Florida. I testified to that.

Q Wasn't it also because the entire package was not resolved, not only Montmartre, but Montmartre, John Allan and Neisco and the lease problem and the life insurance problem, those all hung together, didn't they?

A No, Mr.Schwartz. You persist in attempting to put them together, and I persist in responding to you affirmatively that one had no relation to the other.

Q By not --

A The Neisco situation stood on its own foot. And by that time it was to be acquired, owned and operated by Mr. Eisenrod, who was assuming the liability for Neisco to the Teamsters Fund.

On the contrary, and separate and apart from that, were all the other negotiations whereby Mr.George Horvath was going to be operating the Montmartre under an extension of time with the mortgage, with the reduction of interest and various other factors that were involved there.

Q Were the Horvaths willing to transfer the Neisco stock to the fund or to Eisenrod without getting the employment agreement by Ernest?

A They were going out of there, that's right.

Q You didn't answer my question.

MR. SCHWARTZ: Will you read the question back?

(Question read.)

THE WITNESS: I said they had already agreed to do that.

Q Who had agreed to it?

A The Horvaths. That is whom you asked me about, wasn't it?

Q They agreed to transfer the Neisco stock without getting the employment agreement?

A That is correct.

Q Do you have any document establishing that?

A I only have the documents that have been admitted into evidence.

Q Is there any document that has been admitted into evidence which supports the statement that you have just made?

A Well, I will repeat what I testified to yesterday. If you will read those documents very carefully, you will note that there is no problem, no dispute about the Neisco situation at all. There was a complete agreement orally which I was confirming in writing to the effect that the fund was funding the Chapter XI plan of arrangement, and that separate and apart from that, all the other items concerned themselves with the Montmartre situation, and how to resolve that particular problem--

Q Is there any --

A --which was very complicated.

Q Is there any agreement signed by anyone on behalf of the fund agreeing to the funding of the Neisco arrangement?

A Agreeing to the what?

Q Agreeing to fund the Neisco arrangement.

A You have asked me that any number of times --

Q I know, but have you produced any document -- can you point to any document in evidence, signed by the fund or a representative of the fund, agreeing to anything?

A I have said to you no, that it had been confirmed in my letters to Mr. Radom, to Mr.Eisenrod and to various other persons involved.

Q Is there any document --

A -- Which confirmed the oral agreements.

Q Is there any document in the record or in your files signed by Mr.Radom or Eisenrod or anyone else on behalf of the fund, accepting any one of your letter proposals?

A Papers signed by anybody in the fund?

Q Yes.

A I believe the minutes of the trustees themselves, their minutes, confirm the fact that they were going to fund.

MR. SCHWARTZ: May I offer in evidence, your Honor, the minutes of the trustees, that the witness has referred to, all of which are attached as exhibits, to the extent that they relate to Neisco, to the defendants' answer to plaintiffs' interrogatories in this action.

If I may have the interrogatories marked for identification first, I will identify which parts they are.

xxx (Defendants' Exhibit F was marked for identification.)

MR. SCHWARTZ: I ask your Honor to receive in evidence the response Number 5, which relates to this specific question, and the exhibits attached, Exhibits A through L.

THE COURT: Is there objection?

MR. KNIGIN: No objection, your Honor.

THE COURT: Received.

MR. KNIGIN: By the way, your Honor, just in connection with the offering, is Mr. Schwartz offering these as the total minutes of the fund?

MR. SCHWARTZ: Relating to Neisco.

MR. KNIGIN: Your Honor, I would have to object to the offering as being the total minutes of the fund relating to Neisco. The reason is, your Honor, we have an examination before trial of Mr.Duffey, who is the first named defendant, and a trustee under the fund, in which he has admitted that the fund, from time to time, called special meetings for which there were no notices on record, and for which they kept no minutes. Because, your Honor, plain and simple, I ask the Court to take judicial notice of the fact that this is a rather infamous fund of a rather infamous union, at least according to the most recent newspaper reports. I would have to be extremely apprehensive as to the reason why Mr. Duffey made that specific point, that he didn't always keep minutes and they didn't always keep copies of the notices that were sent out for meetings.

So if Mr.Schwartz would like to make his offering for the purpose of giving what he presumes to be the only available minutes in relation to Neisco, I have no objection. But I think the Court should be aware of the total scope of what the problem is that we are dealing with here.

THE COURT: I decline to take judicial notice of the character of any particular individual or institution.

The witness testified that he believed that pertinent information in respect of acknowledgement by the fund of this sort of obligation appeared in the minutes of the fund meetings.

I am accepting this offer as constituting minutes of the fund's meetings. I will not conclude that they are complete. I do not know. If there is any evidence that can be given to the Court to demonstrate a lack of completeness, I will consider them.

I will accept the offer as minutes, period.

MR. SCHWARTZ: I would like to state for the record, your Honor, if I may, that pursuant to an order of this Court, the plaintiffs' counsel were given the opportunity to go to Chicago and to look through the original minutes of the fund, all of the minutes had in this period, which they did, and if there was anything that we haven't disclosed, I am sure they could have picked it up if it existed, and if they have it they will offer it.

MR. KNIGIN: Your Honor, Mr. Schwartz is as privy to this information as I am.

In the examination before trial conducted of Mr. Duffey, who was the trustee of this fund, he said at page 10, in response to the following questions and answers:

"Q To your knowledge, are minutes taken by a court reporting firm of each and every meeting of the fund, including those irregular meetings between quarterly meetings?

"A Well, I can't testify to a certainty that each and every meeting was attended by a court reporter. There may have been special meetings where a court reporter was not present, but that would be the exception to the rule.

"Q What is the usual procedure for calling a special meeting of the trustees?

"A How does it come about?

"Q Yes.

"A A notice is sent to the trustees for the calling of a special meeting.

"Q Written notice?

"A Yes.

"Q Do you keep a file of these notices which you receive on special meetings?

"A No."

Now, your Honor, what doesn't exist we can't verify.

THE COURT: Look, Mr. Knigin, you can put that deposition into evidence. You can call it to my attention afterwards. If, when the final decision-making process begins, Mr. Schwartz takes the position that he should suggest that these minutes, which I am now receiving into evidence, are complete and disprove the suggestion of the witness, then you can fire back with that deposition and invite me to conclude that perhaps they are not complete.

MR. KNIGIN: All right, your Honor. I thank you for that.

THE COURT: But I am receiving these minutes for the purpose, and under the conditions stated..

BY MR. SCHWARTZ:

Q Mr. Ballon, you have some notes before you that you were referring to which were marked Defendants' Exhibit A for identification. May I see those. Thank you.

I would like to read from the witness' deposition before trial.

MR. SCHWARTZ: Will you furnish the Court with a copy, Mr. Knigin.

Page 20 -- I am sorry, page 19, line 19.

"Q When was the next time you had a meeting with anyone on behalf of the pension fund?

"A On November 11th, Mr. Teitlebaum and Mr. Radom came to New York and they met with two accountants that were retained by the fund, one of whom I recall to be Murray Weisser, and they met, if I recall correctly, in the office of Neisco with Mr. Polish and myself, and Mr. George Horvath. Possibly Mr. Ernest Horvath attended the meeting, too."

Then I will skip to line 11, page 20.

"A That it was a representative of Wasserman & Taten, and Mr. Ehrenberg was a member of that firm who attended the meeting. I think a large part of that meeting was devoted to a discussion of figures, finance projections, cash flows and things of that type. Incidentally, some of the conversation that I have already testified to concerning the Montmartre situation was undoubtedly discussed at that time, too.

"Q Was there any discussion at that time as to the administration expenses of the Neisco Chapter XI proceeding?

"A There must have been because I see that I prepared an agreement with the fund, and these various agreements that were prepared and usually forwarded, I believe, to Mr.Radom, possibly with a copy to Mr. Teitlebaum as well, usually provided for the fund to fund or finance or advance the funds necessary and make payment of the settlement arrangements, including the administration expenses.

"Q Do you have a copy of that draft agreement?

"A I don't know, I don't think I have.

"Q Would it be in the files?

"A If I have, I didn't bring it with me."

Q Since your examination have you looked for that agreement?

A No, I haven't, but I have --

Q Do you have any such agreement?

A What is that?

Q Do you have any such agreement?

A Yes, I believe we have.

Q Will you kindly produce it.

MR. KNIGIN: Surely.

MR. SCHWARTZ: We are talking about a meeting of November 11, 1969. Before the filing of the petition, your Honor.

MR. KNIGIN: If you are talking about agreements drawn in close proximity to that time, the only agreements we have in our file are proposed agreements of July 1970.

Apparently I have reference to the wrong ones and that is not the ones that Mr.Schwartz is looking for.

THE COURT: It sounds like there is no such agreements.

THE WITNESS: On refreshing my recollection, that particular agreement, which was redrafted on that day, dealt with the Montmartre situation,and that is the one that was sent down to counsel for Horvath down in Florida, That's the way I recall it now.

Q Did that agreement refer to the fees to be paid to your firm by the pension fund?

A No, it didn't.

MR.KNIGIN: Your Honor, could we have just a brief recess.

THE COURT: Certainly.

(Recess.)

BY MR. SCHWARTZ:

Q I will continue reading from Mr.Ballon's deposition at page 27, line 23.

"Q Could you tell us who said what at that meeting?"

THE COURT: Let's identify the meeting.

MR. SCHWARTZ: That meeting was a meeting of November 19, 1969, in Chicago.

"A At that meeting, to the best of my recollection, all of the details that had arisen up to that point were salary agreed upon, and I was authorized to proceed with the filing of the Chapter XI proceeding on behalf of Neisco, and with reference to the payment to my -- to my firm -- of my retainer fee of $25,000; they, the fund's representatives, said they would authorize payment to be made to me from the Montmartre account, whatever the name of that corporation was down there. There were several corporations down there.

"By that time, by agreement between the parties, the fund already had a counter signature on the Montmartre bank account and they agreed that they would authorize a payment to me from the Montmartre bank account of $25,000, and they would also authorize the payment from that account of $25,000 to Mr.Ehrenberg's firm, which was Wasserman & Taten, and there were some notes involving some $35,000 which they also said they would authorize a payment of from the Montmartre bank account.

"Q Notes of Neisco?

"A I beg your pardon?

"Q Notes of Neisco?

"A Yes.

"Q Now, you have been talking in generalities, referring to the speaker as 'they'. Could you tell us who, specifically, if you can recall, made these statements?

"A Which statements?

"Q The ones you just testified to.

"A All of these people joined in the statements and the ones that didn't join in, they acquiesced by their silence.

"Q Did you contribute" --

MR. SCHWARTZ: For the record I think that word was "attribute".

"Q -- any specific statement to any specific person?

"A Well, you seem to be particularly concerned with the fund agreement to make payment of the administration expenses."

I will skip to the next question.. I will skip to line 11 where the witness continued his answer.

"A No, I think it is difficult to segregate a few words to a particular person in a conference that took five or six hours or more. No.

"Q Could you tell us any specific words that anyone used that led you to the conclusion that you just testified to?

"A I can only paraphrase words. I can't tell you actually words that anyone uttered five years ago.

"Q Could you paraphrase the words rather than give us conclusions as you have in the previous answer?

"A I thought you said paraphrase them, the statements that were made which were made by that time -- oh, yes, there was -- I left this out before. By this time the fund had had its accountants make a complete audit and survey of the Neisco situation and they determined that Mr. Horvath was in error. That he needed more money than a million, two or 300,000, and that according to their projections he needed $1,600,000, and they agreed in so many words -- they specifically said they would advance, amend to the Neisco situation under this order that we were going to enter, $1,600,000, and it was needed from time to time. In addition to that, they specifically authorized me to go ahead with the filing of the petition and to attempt to promulgate a plan for the creditors and to make the settlement and to try to work out an arrangement with Internal Revenue Service, and that they would supply the fund the necessary funds and make payment of the necessary payments to pay creditors, to pay Internal Revenue Service, to pay me, or to pay my firm for our services, and our disbursements, and to make payments of all our incidental expenses as counsel for the creditors committee, court fees and the secretary, if any.

"Q Was that contingent upon any conclusion of the reorganization proceeding?

"A It was contingent upon my obtaining the necessary consent of the creditors as provided by law to a plan that I was going to promulgate on behalf of the creditors".

Q Did you ever receive a letter from Mr.Radom, addressed to you personally, in which he said that the pension fund could not sanction the payment of fees to your office directly?

A Did I receive such a letter?

Q Yes.

A Yes. I asked him when -- when the pension fund asked me to file a petition in bankruptcy for Masmo, I asked for a $5000 fee at the time, to file a voluntary petition for Masmo, and in a very lengthy letter, and one of the sentences in the letter, Mr.Radom said that he -- he didn't see how the fund could do this, or couldn't make payment.

Q Is this the letter you have reference to, February 18, 1970?

A " I know of no means by which the pension fund can sanction payments of fees to your office as suggested in your February 3rd letter."

That was in response to my letter of February 3rd where I asked for the $5000 in order to file a voluntary petition in bankruptcy in Masmo. Eventually, the fund did arrange to have those funds paid to my offices, and I did file the voluntary petition in bankruptcy for Masmo.

Q Were those funds paid by a Horvath company?

A I have no recollection. I know the fund arranged to have the funds paid to me. I don't remember where they came from.

Q Will you concede that they were not paid by the fund directly?

A No, I can't concede anything because I have no recollection. I am sorry.

MR. SCHWARTZ: May we have this letter marked for identification.

xxx (Defendants' Exhibit G was marked for identification.)

MR. SCHWARTZ: I offer it in evidence.

MR. KNIGIN: No objection.

THE COURT: Received.

xxx (Defendants' Exhibit G was received in evidence.)

MR. SCHWARTZ: I think it is the third paragraph or so, your Honor.

MR. KNIGIN: Your Honor, the Court's attention should be directed to the top of res at the top of the letter which is now covered by the sticker that three corporations were concerned as the subject matter of that letter.

Q Was the fund a lien creditor of Masmo?

A Yes, I believe it was.

Q As a matter of fact, the fund had joint liens covering Masmo and Neisco for an overall obligation that was far larger than Neisco's obligation alone?

A I think you are correct.

Q Page 49, line 15.

"Q When was the next meeting that you had with anyone on behalf of the fund?

"A On June 26, I attended a meeting in Mr. Eisenrod's office, which was attended by Mr. Eisenrod, Mr. Rugendorf, Mr. Horvath, Mr. Polish and myself.

"Q Was that George Horvath?

"A Yes, George Horvath.

"Q Could you tell us what was discussed at that meeting and who said what?

"A I know definitely that Mr. Eisenrod was trying to work out a compromise between two completely different viewpoints at the time on the Montmartre operations, and I don't know whether it was at that time or previous, he indicated that he was going to take over the Neisco operation by an arrangement made by some sort of a deal or purchase agreement with the fund. (sic) That he suggested we do this and the other thing and several modifications of agreements that were being prepared and sent."

Do you recall anything else that was outstanding at that time that Mr.Eisenrod was trying to compromise?

A I only recall that there was a very serious problem in connection with the Montmartre, and that is what we were trying to resolve.

Q In your testimony, Mr. Ballon, you seem to be preoccupied with the Montmartre situation in most of your relation of the discussions between the parties.

Would you say that a large part of this whole problem over the year and a half or two years that it continued related to the Montmartre situation?

MR. KNIGIN: Your Honor, I will only object to the form of the question in the way it was preambled. If counsel would characterize the witness' testimony as being spent with a great deal of time devoted to answering questions on Montmartre, that may be his characterization, but considering Mr.Ballon has been on the stand about five or six hours in total already in two days, it seems to me that very little of his time has been spent mentioning Montmartre, and I think that that is an improper characterization.

THE COURT: I am going to disregard the characterization as preoccupied. We have had a good deal of testimony about Montmartre, but I am not prepared to conclude that that constitutes preoccupation on the witness' part.

I am persuaded that Montmartre was a part of the background, and presumably that is why he has testified about it.

MR. SCHWARTZ: May we have the last part of the question then read to the witness.

(Record read.)

THE WITNESS: The problems between the parties related in large part to the Montmartre situation.

MR. SCHWARTZ: That is all, your Honor.

THE WITNESS: May I just -- I have had my recollection refreshed as to a question you asked me before, as to cases in which third party moneys were paid.

Within the past couple of months we confirmed a plan in a case called Globe Manufacturing Company, where our fee was paid by third party funds. And with reference to your other question where there was a diversity or conflict of interest, several years ago we confirmed a plan for a firm known as Abbe, I believe it was, Rabiner & Company. They were located on Seventh Avenue some place, in which the funds were advanced by the factor who had a lien on the assets, and the accounts receivable of Abbe Rabiner -- and was in a comparable situation -- and the funds for the financing of the Chapter XI plan were advanced by the factor.

BY MR. SCHWARTZ:

Q Were those facts disclosed -- I will withdraw that.

Were you the attorney for the debtor in possession in the Rabiner case?

A Was I the attorney -- yes. My firm was the attorney for the debtor in both of these cases.

Q Did you disclose the relationship between the factor and your firm at the time that you applied for appointment?

A No.

Q Was there an agreement at the time you applied for appointment that the factor would pay the costs of financing the plan?

A No more so than in this case. The same type of agreement.

Q Am I to assume then from your answer that in this case there was no specific agreement at the time of the inception of your conferences with the fund?

A Y our assumption is incorrect.

Q Was there an agreement in theRabiner case with the factor before you filed the petition that they would finance the plan?

A There was an agreement that if the plan was satisfactorily promulgated, they would finance the plan and advance the funds.

Q All conditioned upon a satisfactory outcome?

A I beg your pardon?

Q It was all contingent upon a satisfactory outcome?

A Yes.

Q In the Globe Manufacturing case, who was the third party that advanced the money there, in addition to Globe?

A A third party.

Q Was it a lien creditor?

A No, in that case it was not a lien creditor.

Q It was a friend of the debtor, you would say, someone not involved in the proceeding?

A I don't know if it was a friend or not, frankly. I didn't handle the case. Mr. Itzler handled the case.

Q Can we assume that it was not a person who had an adverse interest to the general creditor?

A No. I picked out two cases. Mr. Itzler reminded himself of one and refreshed my recollection, they fitted into the category that you interrogated me about, and that is why I am volunteering the information.

Q With regard to Globe, was the third party a person who was either disassociated from the entire transaction or at least not adverse to the general creditors?

A I did answer your question. As far as I know, he was a third party completely disassociated from the transaction.

MR. SCHWARTZ: Thank you.

MR. KNIGIN: May I, your Honor.

REDIRECT EXAMINATION

BY MR. KNIGIN:

Q Mr.Ballon, we have had some lengthy discussions concerning ethics and conflicts of interest.

I would like to just clarify a couple of points, if you would assist the Court and me on.

Firstly, would you tell us what the normal, regular procedure in a bankruptcy case is concerning the revealing to the Court of the payment to the attorneys for the debtor of the fees, how is that normally done?

A It is done by making a statement in the schedules, as it was done in this case.

Q Is that the way it was done in this case, Mr. Ballon?

A Yes.

Q And that is the Schedule G4, I think it is?

A It was marked in evidence. I don't know the number.

Q It is now B4.

By the way, that is Defendants' Exhibit B in evidence.

At that point, as I read it, Mr.Ballon, you said -- or whoever filed the petition -- was the petition prepared by your office?

A Yes.

Q It was signed by Mr. Horvath, as treasurer of Neisco?

A Yes.

Q In relation to attorneys' fees, "Debtor has been paid no sums to Ballon, Stoll & Shyman, attorneys herein, for legal services rendered or to be rendered in these proceedings. All fees have been paid by Montmartre, Inc., by way of promissory notes and estimated value was of $25,000", is that correct?

A That is correct.

Q Is there any place in these schedules, based upon your forty years of practice, to put down what your arrangements are in respect to future fees?

A No.

Q As a matter of procedure, under cases in Chapter XI, when is such a revelation made to the Court concerning future or subsequent fees?

A At the time an application is made for allowances.

Q When is that?

A At time of confirmation.

Q Confirmation of the plan?

A That is correct.

Q There was no confirmation of the plan here?

A No, there was no confirmation of the plan.

Q And I think you established the last time in testimony that the reason for the failure of the confirmation was the failure of the funding, is that correct?

A That is correct. Everything else had been done.

Q One other point. We heard talk about a firm called Masmo, and another one called Montmartre, and there may have been a couple of others, I am not sure. When you testified that you went to Chicago in the end of 1969, and met with the fund, and came to the understanding that you testified to concerning the payment value of those items of funding plus the administrative expenses, including your attorneys' fees, was there any conversation at that time between you and the members of the fund as to services that would be performed by you in relation to the Montmartre matter and the Masmo matter?

MR. SCHWARTZ: I object to that, your Honor. That is not involved in this lawsuit at all.

THE COURT: I am not sure that it is or not. You opened the door a bit, Mr.Schwartz, by introducing the letter in which Mr. Radom expresses a view that the fund can't compensate the Ballon firm in respect of Masmo.

I will take the answer.

A No. That was a side issue. The problems involving Montmartre were discussed, but they have no relevance whatsoever to the Neisco situation. In other words, they were separate and apart.

Q Did anybody on behalf of the fund at that time, or subsequent to that time, ever say to you, words to this effect, "Mr.Ballon, if we can't solve Montmartre, if we can't solve Masmo, if we can't solve Ernest Horvath's contract, there is going to be no funding of the Neisco matter"?

A No.

Q As a matter of fact, Mr. Ballon, when the Neisco matter finally came to its abortive conclusion by the announcement by the fund's attorneys that they would not fund the matter, some two years later, what was the reason they gave?

A It is containedin the minutes before Judge Babitt.

Q Do you know what that is?

A Yes. My recollection is that a statement was made that the fund didn't want to go further with the financing or finance the plan because Mr. Horvath had testified in a case involving Mr.Dorfman, whereby Mr. Dorfman was acquitted in this court of a crime.

Q Did the fund at any time through their attorneys, through Mr. Radom, through any trustee, ever say in court that the reason we are not going to go forward with the funding of the Neisco plan was because we couldn't properly settle the IRS claim?

A Because what?

Q Properly settle the IRS claim.

A No.

Q Did they ever say that --

A As a matter of fact --

Q Let me just finish. Did they say that they are not going to go forward because they couldn't work out the contract with Ernest Horvath?

A No.

Q Did they say they wouldn't go forward with the settlement because of some problems with Montmartre?

A No.

Q Did they say that they couldn't go forward because of some problems with Masmo?

A No.

Q The only reason --

MR. SCHWARTZ: I wonder whether Mr. Knigin is the witness or Mr. Ballon. These are -- Mr. Knigin is testifying.

MR. KNIGIN: Your Honor, this is redirect, and counsel very, very effectively tried to interject a suggestion to this Court that there was some interrelationship between all of these cases and the conduct and the discharge of Mr.Ballon's services.

I think, your Honor, I have a right to inquire as to whether or not they were in fact relevant.

THE COURT: It is proper rebuttal. The subject matter is certainly proper rebuttal in view of the suggestions being made by the defendant. And in this particular instance I will accept the form of the question.

MR.KNIGIN: Thank you, your Honor.

No further questions.

MR. SCHWARTZ: May I have the bankruptcy schedule, Mr. Knigin.

RECROSS-EXAMINATION

BY MR. SCHWARTZ:

Q Mr.Ballon, Schedule B4, which is now marked here as Defendants' Exhibit B, is a schedule of assets of the bankrupt, or the debtor, and it is so headed at the top, and I quote it: "Property in reversion, remainder or expectancy, including property held in trust for the debtor or subject to any power or right to dispose of or to charge" -- that is so, isn't it?

A Yes.

Q One of the subdivisions which you answered with respect to the --

A I didn't hear you, Mr.Schwartz?

Q One of the subdivisions of that schedule which you answered with respect to the reference to the Montmartre fees has a question in the margin, which I will quote:

"Attorneys' fees. Sum or sums paid to counsel and to whom, for services rendered or to be rendered in this bankruptcy".

The response to that question that you said the debtor has paid no sums to your firm, and all fees had been paid by Montmartre, Inc. by way of promissory notes.

Did that payment in response to the question include services to be rendered in the bankruptcy?

A I have nothing to do with services to be rendered.

Q Did you qualify your answer so that it would not be interpreted to be in answer to the question in its entirety?

A No, those are the forms that are prescribed by the bankruptcy rules, and that is the only place where a disclosure could be made of a fee that was paid to our firm by the debtor or by any other person.

We were very careful to disclose the exact source of the funds where -- which we were to be paid. Where the funds were coming in the future, there was no provision for that there.

Q In other words, the statement in the question, "For services rendered or to be rendered" didn't require, in your opinion, an answer as to your agreement with the fund for the payment of future services?

A Absolutely not.

MR. SCHWARTZ: Thank you.

MR. KNIGIN: No further questions.

BY MR. SCHWARTZ:

Q Apart from the bankruptcy schedule, which is a list of assets, we have Section 342 of theBankruptcy Law which gives the debtor in possession the powers of a trustee in bankruptcy, do we not, and we also have Rule 215 of the Bankruptcy Rules, which requires a disclosure of any conflict of interest between the attorney for the debtor in possession and the estate.

Those matters aren't covered at all by the schedules, are they?

A I am sorry, I didn't hear your question. Was there a question? I didn't hear it.

Q Are the requirements -- let me rephrase the question.

Are the requirements of Rule 215 of the Bankruptcy Rules for disclosure of a conflict of interest on the part of a proposed attorney for a debtor in possession covered in any respect in the schedules?

A Is it covered any place in these schedules?

Q That's right.

A There was no conflict of interest in this particular case. The fund -- the Teamsters were represented in these proceedings throughout the proceedings by their own attorneys, two sets of attorneys.

Q Assuming there was a conflict of interest, is there any provision in the bankruptcy schedules to state that conflict of interest?

A No.

Q The place to state that is when you apply for an order authorizing the retainer of counsel, isn't that so?

A If there is a conflict of interest, or a disclosure in open court to the Court and to creditors.

Q Do not the bankruptcy rules require the conflict of interest to be disclosed in the petition and the affidavit of the attorney?

A If there is a conflict of interest, yes.

Q If there is a conflict of interest?

A Yes.

Q There was no disclosure in your papers at any time of the alleged agreement with the fund?

A No, there was no disclosure of my agreement with the fund, which -- all right.

REDIRECT EXAMINATION

BY MR. KNIGIN:

Q Was the agreement that you had with the fund a conflict of interest?

A No.

MR. SCHWARTZ: I object to that, your Honor. That is a question of law which your Honor will have to decide.

MR. KNIGIN: He just asked him the one before it, your Honor, the exact question.

MR. SCHWARTZ: The decision will be for the Court.

THE COURT: As you gently reminded me the other day, Mr.Schwartz, bankruptcy is not my strong suit. I will accept the witness' answer.

MR. SCHWARTZ: I don't think that is even a bankruptcy question. It is a question of conflict of interest. Any lawyer who represents both sides of a litigated problem, he is in conflict of interest.

THE COURT: Nonetheless, I will take the witness' opinion, although I agree with you I am not bound by it.

Q Does that constitute a conflict of interest, Mr. Ballon?

A Yes. We were not representing the fund.

Q I say, under the circumstances of your agreement with the fund in this case, did your relationship constitute a conflict of interest?

A Absolutely not.

MR. KNIGIN: No further questions.

MR. SCHWARTZ: No further questions, your Honor.

BY THE COURT:

Q Now, Mr.Ballon, I have before me the text of Bankruptcy Rule 215, and it specifies the papers which must be submitted in order to obtain an order from the Bankruptcy Court employing an attorney.

One of the statements which must be made in connection with that application -- and I am reading now from the rule -- is a statement "To the best of the applicant's knowledge, all of the attorneys'or accountants' connections with the bankrupt, the creditors, or any other party in interest, and their respective attorneys, and accountants" -- now, is it your testimony that the arrangements which you have testified to between your firm and the fund, and on which your firm bases its lawsuit in this case, didn't constitute a connection between your firm and the trust, within the context of that rule?

MR. KNIGIN: Your Honor, before the witness answers, may I direct your Honor's attention to the fact that you are reading from a rule that was promulgated five years after the filing of this petition. The rule that bound at that time was General Order 44, in which this plaintiff was in complete compliance.

MR. SCHWARTZ: May I suggest --

THE COURT: I am grateful to you for that observation.

Do you want to respond to that, Mr.Schwartz?

MR. SCHWARTZ: I have two responses. First of all, there is no basic change between Rule 215 and General Order 44, except to the extent that to some extent Rule 215 is led rigid than General Order 44.

I also point out that under the Bankruptcy Rules of the Southern District, they still refer to Rule General Order 44 as being applicable to these applications.

MR. KNIGIN: Your Honor, I won't mind if you want to insert any language that you thought was appropriate from General Order 44, but that was the criteria under which this firm was required to act under at that time and certainly not a rule that was promulgated five years later.

THE COURT: I will consider what you say.

Let me ask you this, Mr.Ballon, within the Rule 215 context, do you consider that your arrangements with the fund constituted or gave rise to a connection between your firm and the fund?

THE WITNESS: No. My services were always being rendered to and for Neisco Corporation and there was no -- as a matter of fact, at all times we even went to the extent of making a search as to their lien and the validity of their lien as to whether proper filings had been made. We fully performed our duties in all respects. In other words, we didn't serve or perform any function as counsel or attorneys for the fund.

As a matter of fact, they had at all times their own counsel who made appearances in court on the court record, two attorneys, Mr.Radom appeared as attorney for the fund, and Mr. Schaeffer's firm, Mr. Vogel, appeared, I believe, either as attorney for the fund or as attorney for Mr. Radom, but at all times, they both were representing there at all times.

As a matter of fact, when it came to the resolution of the Internal Revenue claim, we didn't even participate in it. The fund handled it all by itself. They went down to Washington and they settled the thing down there by themselves.

THE COURT: Accepting that to be true, and that there were other representatives and other attorneys on the scene protecting the interests of the fund in these proceedings, do you still say that the arrangements you had with the fund didn't give rise to a connection between your firm and the fund?

THE WITNESS: No connection whatsoever.

THE COURT: No connection whatsoever.

Does anyone have the text of General Order 44? I have betrayed my ignorance by relying upon a five-year -- rather a ruling which came along five years later, although you lured me into that error, Mr.Schwartz, if it is an error, by giving it a certain prominence in your trial memorandum.

MR. SCHWARTZ: The point is that the case we cite is from General Order 44, an old case, and as I say, under the Southern District rules, which have never been changed, under Rule 10 of the Southern District Bankruptcy Rules, the requirement still relates back to General Order 44.

THE COURT: Has anyone got a copy of General Order 44?

MR. ITZLER: It hasn't been in the book for quite a while. They said General Order 44 has been superseded by Rule 215. I will look for it.

THE COURT: I can look for it, too.

MR. ITZLER: I can check during lunch, your Honor.

THE COURT: So can I. I know you are going to be a witness in this case, Mr. Itzler. This is a subject that you and I can pursue.

I have no further questions for the witness.

You are excused. Thank you.

(Witness excused.)

MR. KNIGIN: May I call our next witness?

THE COURT: Please do.

RONALD S. ITZLER, called as a witness being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KNIGIN:

Q Mr. Itzler, are you a partner in the plaintiff firm, Ballon, Stoll & Itzler?

A Yes.

Q How long have you been a partner?

A Since 1968.

Q How long have you been an attorney-at-law?

A Fifteen years.

Q Are you admitted to practice in the courts of the State of New York?

A Yes.

Q What has been the specialty that you have, if any, in connection with your association with Ballon, Stoll & Itzler?

A Insolvency and debtor rehabilitation.

Q Does that include bankruptcy work?

A It does.

Q As a practical matter, in the Ballon, Stoll & Itzler frame of things, whose responsibility is it to supervise most of the bankruptcy cases today?

A I am.

Q Do you supervise the lawyers, the other lawyers in the firm who are involved in bankruptcy work?

A Yes.

MR. SCHWARTZ: If your Honor please, I think we can concede Mr. Itzler's qualifications.

THE COURT: Very well.

MR. KNIGIN: Fine. Thank you very much, Mr. Schwartz.

THE WITNESS: Thank you.

Q By the way, Mr. Itzler, are you presently involved in handling the W.T.Grant bankruptcy?

A Yes, I am the partner in our firm in charge of the representation of the trustee in bankruptcy of W.T. Grant.

Q Mr. Itzler, when did you first become familiar with the Neisco situation?

A November of 1969.

Q What were the circumstances under which you gained that familiarity?

A A discussion with Mr.Ballon with respect to it.

Q As the result of that discussion, did you do anything?

A Yes.

Q What did you do?

A I commenced the preparation of the petition for an arrangement under Chapter XI of the Bankruptcy Act.

Q Is that the petition that has been handed up previously in this proceeding?

A The papers that you were handing up were the schedules which were submitted some time after the filing of the actual petition and concomitent papers.

Q Between the filing of the petition and the filing of the schedules -- excuse me. Up until the time of the filing of the petition, did you ever attend any meetings at which representatives of either Neisco or the Teamsters fund were present?

A I met with George Horvath alone.

Q Did you ever meet at a meeting in which the -- that is the fund people were present?

A No, I didn't.

Q After you filed the petition, but before you filed the schedules, did you ever attend such a meeting?

A Yes.

Q I just, for your clarification, would call your attention to the fact that the schedules which are already in evidence have been sworn to on December 29, 1969. So by that time had you attended any meetings?

A Yes.

Q At which pension people were present?

A Yes.

Q Where did this meeting take place?

A In our offices.

Q Who was present on behalf of the pension fund?

A During that period of time --

MR. SCHWARTZ: May we have, instead of grouping meetings, if we are going to have testimony as to conversations, dates and then take each one as a separate item.

MR. KNIGIN: I will try to.

THE COURT: Do it meeting by meeting.

MR. KNIGIN: Certainly, your Honor.

Q When would you say the first of these meetings took place, Mr. Itzler?

A Shortly after the filing of the petition.

Perhaps two or -- perhaps two weeks or so.

Q Do you have any independent recollection other than the petition filing date?

A No, I do not.

Q Do you know how far prior to December 1969, December 29, 1969, it was?

A Not any precise recollection, no.

Q But you know it was some time between November 19, I believe is the petition date, and December of1969, December 29, is that correct?

A Yes.

Q Now, at the first meeting following the filing of the petition, that you say took place at the offices of Ballon, Stoll & Itzler -- I think it was then Ballon, Stoll & Shyman, is that correct?

A That is correct.

Q Who was present?

A To the best of my recollection, besides myself and Mr.Ballon, Mr.Radom was present, Mr. Melman, who I believe was Mr.Radom's partner or associate, a gentleman whose name I can't recall, but who had an outstanding physical characteristic, he had but one arm --

Q Has that man since been identified to you?

A I think so. Right now I can't remember his name. It begins -- Matheson.

Q Do you know what his role was?

A I think he was a trustee.

Q One of the named defendants?

A That is correct.

Q Go ahead, I am sorry.

A I believe Mr. Teitlebaum was there -- I know Mr. Teitlebaum was there. Mr. Polish, Mr. George Horvath, perhaps another person, but I can't recall anyone else.

Q Were you continuously present at this meeting?

A Yes.

Q How long did the meeting go on?

A Approximately two hours, two and a half hours, perhaps three.

Q By the way, the Mr. Radom that you have reference to, is that the gentleman who is seated to the extreme left of the counsel table?

A Yes.

Q During the time that you were present, were there any discussions concerning the funding of a Chapter XI plan on behalf of Neisco?

A Yes.

Q To the best of your recollection, Mr. Itzler, would you tell us what the nature of that -- those discussions were and who it was that was talking during the different periods of discussion?

A Substantially, all of the talking on the part of Neisco was done by Mr. Ballon, with some discussion by Mr. George Horvath. Substantially all of the talking on behalf of the fund was done by Mr. Radom, with some discussion by Mr. Melman.

There may have been some discussion on the part of Mr. Teitlebaum.

With respect to the funding of the plan, the nature of the discussion was that the plan would be funded by the pension fund.

Q Were there any discussions concerning how much would be necessary to fund the plan?

A Yes.

Q Who was the one who took the responsibility of giving that advice to the members of the fund who were present?

A I don't recall.

Q Was there any discussion concerning the administration expenses associated with the Chapter XI proceeding?

A Yes.

Q Who gave the advice as to what that cost would be?

A Mr.Ballon did.

Q Did Mr.Ballon at any time explain any breakdown of the administrative cost of the Chapter XI proceeding?

A Yes, he did.

MR. SCHWARTZ: I wonder if the witness can't just be asked to tell what he recalls was discussed at that meeting, without being led to the subjects which are possibly not intended to be leading, but they certainly are leading.

THE COURT: Ask the witness to give his recollection as to what was stated on the general subject of administrative expenses.

MR. KNIGIN: For the purposes, your Honor, of some degree of brevity. It is a two-hour meeting. Iam trying to focus in on the issues germane to this lawsuit, rather than a general discussion, but I will try not to lead in any way.

Q Mr. Itzler, what was said in relation to the administration expenses?

A Mr.Ballon -- with regard to the amounts?

Q Yes.

A Mr. Ballon estimated that counsel for the creditors committee, upon confirmation and arrangement, would be required -- would require approximately $25,000; that we would require an additional $75,000 for services.

Q Additional to what, Mr. Itzler?

A $25,000 that had been promised to us.

That a secretary would receive a relatively nominal sum; that court costs would be relatively nominal. Basically that was it.

Q What if anything was said by the fund in response to this?

A The fund indicated that they would finance the entire plan, including the necessary administration expense.

Q Who --

MR. SCHWARTZ: May I move to strike out the last answer. The fund obviously wasn't present at the meeting. I would like the witness to say who said what.

THE COURT: I think you aniticipated Mr. Knigin's next question. If not, you anticipated mine.

Who said that, Mr. Itzler, if you can remember?

THE WITNESS: Mr.Radom.

Q Now, was there any controversy about this fact?

A None.

Q Were there any statements made by any representatives of the fund concerning the contingency nature of this understanding?

A None.

Q Was there any discussion about this understanding being tied to the successful completion of negotiations on subjects relating to other companies that may be -- that hage been companies of Horvath?

A None whatsoever.

Q Were the discussions in your presence concerning Montmartre, Masmo, Ernest Horvath and the Internal Revenue Service?

A WEre there discussions? Yes, there were.

Q Were any of those discussions made a condition to the understanding that you have just described that was reached in the Neisco matter?

A No.

THE COURT: Will you tell me again the place and time of this meeting. I know you did it, but I seem to have missed it.

MR. KNIGIN: Between the time of the filing of the petition and the filing of the schddules, your Honor, which is to my recollection between November 19 and December 29, 1969.

MR. SCHWARTZ: The petition was filed November 24.

MR. KNIGIN: November 24, and December 29. That even narrows it further. Thank you, Mr.Schwartz.

THE COURT: The meeting was in New York, was it?

THE WITNESS: Yes, sir.

Q Between that meeting, Mr. Itzler, and the filing of the schedules, was there another meeting?

A If I could have that diary sheet.

MR. KNIGIN: Let the record show that I am handing to the witness at this time the diary compilation prepared by Ballon, Stoll & Itzler in reference to this case which I would normally not have introduced until we got to that portion of the trial relating to damages, but it already was put into the case as Defendants' Exhibit A for identification in the deposition of Mr.Ballon, I believe.

A I believe that there was a brief meeting on December 10 of that year, 1969, prior to the meeting at the Hotel Roosevelt, which was the meeting of general creditors called by our offices.

Q By the way, Mr. Itzler, while you have that document before you, does it help refresh your recollection as to the date of the meeting that you just testified to?

A No, it does not. I am afraid not. I think it was December 5, but I am not sure.

Q As to the meeting --

MR. KNIGIN: Maybe we ought to mark this for identification because it will become an issue in the trial anyhow.

xxx (Plaintiffs' Exhibit 12 was marked for identification.)

Q Now, Mr. Itzler, to the best of your recollection, this second meeting which, as you say, you think occurred just before the meeting of creditors, who did you meet with tat that time?

A I believe the only one that was present was Mr.Radom, I believe.

Q WAs Mr. Ballon present?

A Oh, yes.

Q Anybody else?

A Mr. Horvath, George Horvath, myself.

Q WEre there any discussions at that time concerning the funding of the plan?

A No, sir.

Q WEre there any discussions concerning the administration expenses?

A No, sir. That meeting was merely preparatory for the meeting which was to follow, the general creditors meeting.

Q At any time, Mr. Itzler, since the inception of this case in your office -- strike that question.

Did you hear Mr.Ballon's testimony concerning what he understood his arrangements were with the fund?

A Yes.

Q Especially the same related to the payment of legal fees?

A Yes.

Q At any time from the inception of this matter in your office until the present day, was your understanding any different from that testified to by Mr. Ballon?

MR. SCHWARTZ: I object to the form of that question, your Honor. It is hardly evidence what his understanding is.

THE COURT: The case really turns on whether or not there was -- turns in part on whether or not there was a mutual understanding between the parties in respect of conversation, so I would accept this witness' evidence on his understanding.

MR. KNIGIN: Thank you, your Honor.

A My understanding was the same as Mr.Ballon.

Q Did you have subsequent conversations following the filing of the schedules at which Mr.Radom was present?

A Yes.

Q Were you ever at meetings in which other members of the fund were present?

A I attended a number of meetings where there were more than Mr. Ballon, myself and Mr. Radom present.

To the best of my recollection, at each of those meetings there was another representative of the fund. In some cases it was Mr. Carl Schaeffer, in some cases it was Mr.Teitlebaum; in some cases it was Mr. Melman, and in some cases it was a combination of those persons.

I don't believe I ever met another trustee of the fund.

Q Did you ever have a meeting in which Mr. Rugendorf was present?

A Yes.

Q Now, Mr. Itzler, to the best of your recollection, when following the filing of the schedules did you next attend a meeting in which members of the fund were present?

A May I refresh my recollection again?

Q Surely.

(Pause.)

A February 24, 1970.

Q Do you recall who was present?

A I take that back. May I?

Q Sure.

A I can't point with particularity to a date. If you are referring to representatives of the fund in that, on almost all occasions that we appeared in court, Mr. Radom was present. If that is the kind of meeting -- then he either accompanied me to my office or was at my office before we went to court.

Is that the type of meeting to which you refer?

Q Let's take those first. Did they happen before this February 24th event?

A Oh, yes.

Q Between the time of the filing of the schedules and February 24, how many times would you say you met with Mr.Radom?

A Substantially every time there was a court hearing.

MR. SCHWARTZ: I am a little confused. You said between the filing of the schedule on the 24th of February --

MR. KNIGIN: Between the time of the filing of the schedules and February 24th.

Q How many times, Mr. Itzler?

A Two or three. Every time we went to court, substantially every time we went to court, Mr.Radom was present.

Q When you met with him did you ever discuss with him the subject matter of the funding of the plan?

A No, I didn't.

Q Did you ever discuss with him the administrative costs associated therewith?

A No, I didn't.

Q Did there come a time when you had such a discussion again?

A Yes.

Q When was that?

A I believe it was February 24, 1970.

Q Who was present at that meeting and where did that meeting take place?

A The meeting took place at our offices. If I recall properly, Mr.Radom was present, Mr.Ballon was present, I was present, Mr. George Horvath was present, Mr. Jack Polish was present.

I don't recall whether others were present.

Q Was the subject of the funding discussed then?

A Yes.

Q By the way, who was involved in that discussion?

A By and large, at all the meetings, Mr.Ballon and Mr.Radom were the protagonists and the others were spear carriers, if you will.

Q At that particular meeting, what did Mr.Ballon and Mr.Radom have to say to each other concerning the subject of funding and administration costs?

A The conversation was substantially the same as had occurred at the last meeting that I described.

Q When was the next meeting, to the best of your recollection? By the way, Mr. Itzler, at any time when you were with Mr. Radom in court, you were there -- there was nobody -- let me strike the question.

Whose responsibility was it in the office to conduct the affairs of this proceeding on a day-to-day basis?

A Mine.

Q When you would go to court on the hearings, was it generally with Mr.Ballon or were you generally alone?

A Alone.

Q Was Mr.Radom generally there or not there?

A Generally, he was.

Q Did you have occasion to speak to Mr.Radom alone at any time concerning the arrangements in this proceeding?

A No, I didn't.

Q At any time from beginning to end?

A I don't believe so.

Q When was the next meeting that your recollection is refreshed to the extent that you can remember a meeting where such a discussion did take place?

A April 6, 1970.

Q Where did this meeting take place?

A At our offices.

Q Who was present on that occasion?

A Mr.George Horvath, Mr.Eisenrod, Mr. Rugendorf, Mr. Radom and Mr. Matheson.

Q What was the general nature of the discussion --

A Mr.Ballon and myself and --

Q WAs Mr. Polish there?

A Perhaps. I don't recall.

Q What was the general nature of the discussions concerning -- first of all, were there any discussions concerning the funding of the plan?

A Yes, there were discussions at every meeting of this nature.

Q WEre there discussions concerning the payment of the administration expenses?

A Yes, there were discussions of that at every meeting of this nature.

Q Now, Mr. Itzler, who were the ones who did the discussing of that subject matter at this meeting?

A It was substantially the same people at every meeting, Mr.Ballon and Mr. Radom, and there were some side discussion by other participants, but it was generally Mr. Radom and Mr.Ballon.

Q Could you tell us what they had to say to each other on this occasion, as it relates to the funding and to the payment of the administrative costs of the proceeding?

A The fund would finance the plan, including that portion required for the payment of administration expenses.

Q Was the amount going to be nessarily again discussed?

A Yes, it was.

Q Did anybody on behalf of the fund them assembled object to any of those expenses?

A No.

Q Was there any conversation at this point that the issues of Montmartre, Masmo, Ernest Horvath or Internal Revenue Service would be first satisfied that the plan would be funded?

MR. SCHWARTZ: If your Honor please, I don't know how in the world I can possibly corss-examine on these things when counsel is not only asking the question but putting the answer, and the witness just says yes.

This is so leadind that I don't know how to handle it.

I think the witness ought to be asked what was said and who said it. We have now already three or four meetings where they repeated the same stuff over and over again, which I would think once discussed should have been laid to rest, but that is beside the point. I will cross-examine on that.

But I don't think counsel ought to ask a general question so that he can say yes to the question. Let him give his own story.

MR. KNIGIN: I am under the impression, and perhaps I should be corrected if I am wrong, that the purpose of this proceeding is to narrow the issues as much as possible and to focus directly in on only those issues which come into conflict.

It now appears from everything that I have heard, at least from the examination and cross-examination of Mr.Ballon, things that I have read as far as the pleadings are concerned, that the contention of the fund is that they never agreed to fund and they never agreed to pay the administration expenses.

And that, further, there was also some conditions precedent, that even if they did agree, that these had to be first performed.

The only reason I am narrowing the questions to the extent that I am with Mr. Itzler is because I feel that those are now the only issues that are ultimately going to be submitted to this court for its determination, and

I don't mean to lead, but I certainly want to keep within the framework of what seems to me to be the subject matter of the lawsuit.

THE COURT: The subject of leading questions lies within my discretion. There are two choices, either the witness can be asked what was said, or he can be asked, as he just was, was or was not anything said about a particular subject.

The vice of the leading question is that it may improperly suggest a particular subject to the witness. In the circumstances of this particular case, I will not regard that line of questioning as improperly leading. You may inquire as to whether or not a particular subject was covered at any of these meetings.

MR. KNIGIN: Thank you, your Honor.

Q Now, Mr. Itzler, at this point in time, was anything raised concerning the fact that as a condition precedent to the Neisco plan being funded, the administrative expenses being paid, that there would be required some work on Masmo, Montmartre or Horvath and the IRS?

A No.

Q Can you tell us the next time you attended a meeting in which representatives of the fund were present and the general subject matter of discussion were the items that we have already surveyed?

A April 20, 1970.

Q OnApril 20, 1970, where did such a meeting take place?

A Our offices.

Q Who was present?

A Mr.Ballon, Mr.Radom, myself, Mr.Eisenrod.

Q Was that the first time you met Mr. Eisenrod?

A I don't recall whether it was that day, but I never met Mr.Eisenrod before the Neisco proceeding.

Q Who did he represent himself to be?

A A representative of the pension fund.

Q Did he ever make that representation in front of you in which members of the fund were also present?

A No, sir.

Q Was Mr.Radom ever present when Mr.Eisenrod was present?

A Yes.

Q Did Mr.Eisenrod at that time represent himself to be a representative of the fund?

A Yes.

Q Did Mr.Radom in any way suggest that he was not?

A No.

THE COURT: Let me back up a minute. Mr. Itzler, in your description of the April 6, 1970 meeting, you quoted the representatives of the fund as saying that the fund would finance the plan, including the amount necessary to pay administrative expenses. Is that right?

THE WITNESS: That is correct, sir.

THE COURT: Within the bankruptcy context, does the phrase "administrative expense" include compensation paid to the attorneys for the debtor in possession?

THE WITNESS: Yes, sir.

THE COURT: All right.

BY MR. KNIGIN:

Q By the way, the answer you just gave, is that in response to any time we have used the phraseology "administrative expenses"?

A Yes.

Q It would be the same?

A Yes.

Q Now, could you tell us -- I think the last question that I asked and I don't know if I got an answer from you, so please if I may ask it again, Mr. Itzler, did Mr. Eisenrod, in front of Mr.Radom, say that he was a representative of the fund, in your presence?

A Yes.

Q What transpired at that meeting?

A Substantially the same thing that transpired at every meeting at which these parties participated.

Q And that was?

A There was considerable discussion with respect to the Neisco plan, how it would be promulgated. There was discussion with respect to Montmartre, George Horvath's continuation or non-continuation, Ernest Horvath's continuation or non-continuation. Discussion with respect to various insurance policies. Discussions with respect to a company called John Allan Fibers. Discussion with respect to a company called Masmo. Discussion with respect to Montmartre.

Perhaps one or two other items.

Q Were there any discussions concerning the funding of the plan?

A Yes.

Q Any discussions concerning the administrative expenses?

A Yes, sir.

Q As to the funding of the plan and the administrative expenses, is there anything that happened at this meeting that you are now describing that was inconsistent with what happened at the meetings previously?

A No.

Q Now, Mr. Itzler, you have indicated that there were also discussions at this meeting relating to Masmo, the Horvaths, Internal Revenue, Montmartre, etc. Were those also discussions that were held to prior meetings that you already testified to?

A Those discussions were covered at substantially every meeting.

Q And at this meeting, which you have just described, did anybody on behalf of the fund say that the resolution of those discussions concerning Masmo, Montmartre, the Horvaths, the insurance policies, things like that, were in any way related to their participation in the funding of the Neisco proceeding?

A That was never said.

Q How about as far as their payment of administrative expenses in the Neisco proceeding?

A That was never said.

Q How about in all the previous meetings where this conversation took place?

A It was never said.

Q By the way, were there other meetings that came subsequently?

A Yes.

Q Without identifying them for the moment, so we don't have to keep asking the question over again, was the same general subject matter discussed at these subsequent meetings?

A Generally, yes. Sometimes there was a topic added in place of another topic, because one may have been resolved.

Q As to these items that we have already discussed, were those -- were they discussed?

A At almost every meeting.

Q If I had asked you the questions that I just asked you concerning the nature of these discussions and their relationship to the Neisco matter, would they be the same as to the subsequent meetings?

A Yes.

Q Now, when was the next meeting that you had, to the best of your recollection, with members of the fund?

A The question is members of the fund?

Q When I say "members of the fund", I mean representatives of the fund. I am sorry, Mr.Itzler.

A On June 9, 1970.

Q Who was present there at that meeting, Mr. Itzler?

A Mr.Ballon, myself, Joseph Radom, Sol Eisenrod, Irving Rugendorf, I believe George Horvath and Jack Polish.

Q Was there anything about this meeting that was different from the meetings you testified to before?

A My recollection is that most of the meetings were carbon copies of all of the others. Only the problem was different.

Q What was the purpose of Mr. Rugendorf's presence at this meeting?

A Mr. Rugendorf attended almost all of the meetings. He was a co-signator on the Neisco checks and was the man that I had been communicating with in connection with the -- with various problems during the Chapter XI proceeding.

Q Could you give us an example of the kinds of communications you had with Mr. Rugendorf between the time of this meeting and the time of the filing of the petition?

A There were a number of topics, but three that come to my mind immediately were the premises to be occupied by Neisco; the rent and lease arrangements with respect thereto.

The overhead of Neisco and the paring thereof, which was a goal of Neisco during the proceedings for an arrangement and the issuing of checks and the payment of invoices during the proceedings for an arrangement.

Q Did you ever have any discussions with him concerning his intervention with the management of the corporation?

A I had no such discussions.

Q Do you know of any?

A Yes, they did ensue.

Q Do you know who had those discussions?

A Mr.Ballon, Mr.Horvath and representatives of the pension fund.

Q By the way, Mr. Itzler, on November 24, 1969, when you filed the petition for the Chapter XI proceedings, did you notify both Mr. Radom and Mr. Teitlebaum of that fact?

A I did.

Q I show you these two letters and ask you whether or not these represent copies of the letters that you forwarded to them on that date?

A Yes, they are.

MR. KNIGIN: I offer them for identification,please.

xxx (Plaintiffs' Exhibit 13 was marked for identification;

Plaintiffs' Exhibit 14 was marked for identification.)

MR. SCHWARTZ: No objection, your Honor.

THE COURT: They will be received.

MR. VOGEL: Your Honor, we have for your convenience obtained from upstairs General Order 44.

xxx (Plaintiffs' Exhibits 13 and 14 were received in evidence.)

THE COURT: All right.

(Luncheon recess.)

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss .

VINCENT PANZA, being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and resides at 2002 ELLIS AVE. BRONX, NYC.

That on the 25th day of MARCH, 1977, deponent personally served the within JOINT APPENDIX , VOLUME I OF II PAGES A-1 to A-405 upon the attorneys designated below who represent the indicated parties in this action and at the addresses below stated which are those that have been designated by said attorneys for that purpose.

By leaving 1 true ~~copies~~ copy of same with a duly authorized person at their designated office.

~~By depositing ______ true copies of same enclosed in a postpaid properly addressed wrapper, in the post office or official depository under the exclusive care and custody of the United States post office department within the State of New York.~~

Names of attorneys served, together with the names of the clients represented and the attorneys' designated addresses.

GREENBAUM, WOLFF & ERNST
Attorneys for Defendants-Appellees
437 Madison Ave.
New York, N. Y. 10022

Vincent Panza

Sworn to before me this

25th day of MARCH, 1977.

Michael De Santis

MICHAEL DeSANTIS
Notary Public, State of New York
No. 03-0930908
Qualified in Bronx County
Commission Expires March 30, 197~~8~~ 77